

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

CWP No.25735 of 2015(O&M)

Date of Decision: December 09, 2015

Bachu Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Saurabh Bajaj, Advocate
for the petitioner.

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HARINDER SINGH SIDHU, J.

The petitioner was appointed as Fireman on 15.10.1992. As per the promotion policy on fire fighting services framed by the Government of Haryana under the Electricity (Supply) Act, 1948 (Annexure P-2), the criteria for promotion to various posts is as under:-

- 1. Fireman to Sr.Fireman – 10 years experience as Fireman*
- 2. Sr.Fireman to Assistant Fire Operation – 7 years experience as Sr.Fireman*
- 3. Assistant Fire Operator to Fire Operator – 4 years experience as Assistant Fire Operator*
Total experience from Fireman to Fire Operator – 21 years service

In 2008, there were only 2 posts of Assistant Fire Operator, 23 posts of Fire Operator and 2 posts of Assistant Fire Officer. Accordingly, as the 23 posts of Fire Operator could not be filled up from amongst Assistant Fire Operators, a proposal was made by respondent no.2 in the year 2008 for relaxing the Rules to accommodate the lower level employees in the supervisory cadre of fire fighting services and half number of posts of Fire Operators i.e. 12 posts of Fire Operators were diverted to Assistant Fire Operators.

In view of the relaxation aforesaid, the petitioner and one Shri Ram Bhagat were promoted as Assistant Fire Operators vide order dated 7.10.2013 (Annexure P-5) with the condition amongst others that the promotion was on provisional basis to meet the urgent requirement of the work and it would not confer any right to claim seniority over those who are otherwise senior to them or out of those, whose cases had not been decided for one reason or other. It was also stipulated that the promotions had been made on the clear understanding that if there was any senior person(s) to them, they were liable to be reverted to their original post of Fireman without any notice to make room for senior person(s).

One Shri Chander Kant, who was senior to the petitioner as Fireman was not promoted at the relevant time due to adverse remarks against him and also the pendency of an

enquiry against him. Shri Chander Kant challenged the adverse entries and the initiation of enquiry against him, before this Court, wherein, LPA NO.1135 of 2013 was disposed of vide order dated 3.12.2013 with a direction to the respondent authorities to pass a speaking order afresh after affording an opportunity of hearing to him, in accordance with law.

Pursuant to the aforesaid order of this Court, the respondent passed order dated 30.4.2015 (Annexure P-6), whereby, the adverse remarks against Shri Chander Kant in the ACRs for the year 2005-06, 2006-07 and 2007-08 were expunged. However, in view of the enquiry report dated 12.4.2015, the punishment of stoppage of one annual increment without cumulative effect was upheld.

Pursuant to the above development, a show cause notice dated 17.11.2015 (Annexure P-7) has been issued to the petitioner to withdraw the promotion given to him as Assistant Fire Operator. It is stated therein that as Shri Chander Kant was at Sr.No.1, but had been ignored due to recording of adverse remarks in his ACRs, which now have been expunged, so he has become eligible for promotion to the post of Assistant Fire Operator. Thus, the petitioner would be required to be reverted from the said post to make room for Shri Chander Kant in terms of Clause No.1 of the promotion order dated 7.10.2013 (Annexure P-5). The petitioner has been given opportunity to file

reply within 15 days.

Learned counsel for the petitioner states that as on today, neither any reply to the show cause notice has been filed, nor has any order pursuant to the show cause notice passed by the respondent. He prays that he may be permitted to file a reply to the said show cause notice and a direction be issued to the respondent to consider the said reply before passing any order.

In view of the limited prayer made, the writ petition is disposed of with a direction to respondent No.2 that if any order has not been passed pursuant to the show cause notice dated 17.11.2015 (Annexure P-7) given to the petitioner, then the petitioner shall be given liberty to file a reply to the show cause notice within 7 days from today. If such reply is filed within the time stipulated, the same shall be taken into consideration by respondent No.2 before passing any final order.

A copy of this order be given **dasti** to Learned counsel for the petitioner under the signatures of the Special Secretary of this Bench.

December 09, 2015

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(HARINDER SINGH SIDHU)
JUDGE