

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 4881 of 2013 (O&M)

Date of decision : July 02, 2015

RK Nirmal,

..... Petitioner

v.

UHBVN and another,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. R.N Sharma, Advocate
for the petitioner.

Mr. PS Poonia, Advocate
for the respondents.

1. **Whether Reporters of Local Newspapers 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)

The petitioner has challenged the order of his reversion dated 26.7.2010.

Brief facts are that the petitioner was working as Assistant Engineer and had crossed the age of 50 years when he was promoted to the post of Assistant Executive Engineer. In the Rules, prevalent at that time, the following provision was there :-

“ Note : (a) An Assistant Engineer, who has crossed the age of 50 years, may be considered for exemption from passing the Departmental Accounts Examination provided he has satisfactory record of service. This power, shall be exercised by the Board on the

recommendations of W.T.Ms.”

The case of the petitioner was considered for exemption from passing the Departmental Accounts Examination but not having been found favour with the respondents, he has been reverted, vide order dated 26.05.2010, which is to the following effect :-

“ The request of Sh. R.K Nirmal, SDO for grant of exemption from passing Departmental Accounts Examination was not approved by the Board of Directors. It was directed that the officer be given an opportunity to clear the Departmental Accounts Examination as per the provisions of the service regulations.”

The precise argument of counsel for the petitioner is that though the petitioner may not have had a right for exemption but once the respondents had themselves provided that persons over 50 years of age would have a right to be considered for exemption, his prayer could not have been declined by the non-speaking order quoted above.

Counsel for the respondents, on the other hand, has argued that once the petitioner has accepted that he did not have a right for exemption, he could not claim any redressal against the impugned order.

In my considered opinion, argument of counsel for the petitioner carries more weight. No doubt, as per the rule quoted above, the petitioner does not have the right to claim exemption but once the respondents have themselves made a special provision that those Assistant Engineers who have crossed the age of 50 years and are promoted as Assistant Executive Engineer can claim exemption then any such claim rejected out of hand without assigning any reason whatsoever attracts the vice of arbitrariness. The respondents may allow exemption to one of such persons and may deny it to other persons. In these circumstances, this writ

petition is disposed of with a direction to the respondents to reconsider the claim of the petitioner for exemption, and if it is to be rejected, give the reasons therefor. Needless to say, in case the petitioner is found entitled to be granted the exemption, the benefit would enure to him from the date of his original promotion. Necessary exercise be conducted within two months from the date of receipt of a certified copy of this order.

July 02, 2015
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(AJAY TEWARI)
JUDGE