

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

CWP No.3690 of 2015

Date of Decision:13/08/2015

Rajinder Singh

...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. K.S. Dhanora, Advocate for the petitioner.

Mr. Harish Rathee, Sr. D.A.G. Haryana.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest?

DEEPAK SIBAL, J. (Oral)

The petitioner, who was working as a Helper Tyreman with the respondent-department, responded to a circular dated 19.9.2006 issued by the Roadways Commissioner, Haryana inviting applications from eligible in service employees like the petitioner in the Mechanical Staff Workshops who wanted to become drivers/conductors.

Finding the petitioner to be eligible, his application was favourably considered and through order dated 29.6.2007, he was appointed as a conductor. However, the appointment of the petitioner was termed as temporary. The petitioner served the respondent-department as a conductor for over five years. There was no complaint against his work and conduct but through order dated 6.6.2012, the Director General, Haryana Roadways Chandigarh issued instructions to all General Managers of Haryana Roadways asking them to revert all the temporary in service promotee drivers and conductors like the petitioner to their original posts. In compliance with the above referred instructions issued by the Director General, through order dated 10.7.2012, General Manager, Haryana Roadways, Fatehabad passed an order to revert the petitioner to the post of Helper Tyreman. It is this order of reversion which is challenged by the petitioner through the present writ petition.

Learned counsel for the petitioner has drawn my attention to a judgment of this Court passed in a bunch of appeals, the lead case of which is LPA No.928 of 2013; Sumer Singh and others v. State of Haryana and

others; decided on 7.5.2014 wherein the relief, as claimed by the petitioner, has been granted to the similarly situated employees like the petitioner by holding as under:

“After hearing counsel for the parties, we feel that learned Single Judge failed to take note of the contents of letter dated 19.09.2006, vide which it was decided to invite applications from the employees, working in the Mechanical Staff Workshops to work against the posts of Drivers/Conductors. It was specifically stated therein that those employees, who want to become Driver/Conductor, and are possessing requisite qualifications, may apply for the same. In the decision taken, there is nothing to show that adjustment was to be made on temporary basis. In a very arbitrary manner, after receipt of applications, without any justification, letter was issued to say that it is a temporary measure. Be that as it may, temporary measure can continue for months or for a year and not for a long period of five years. In the process, the appellants had acquired sufficient experience. There is no dispute that they are qualified. In view of the Rules, referred to above, the appellants have a right to be considered and adjusted against the post of Conductor/Drivers Grade I. It is not in dispute that fresh candidates were taken in service without having any experience and the appellants, who had sufficient experience of about five years, were shown the door. The conduct of the respondents-authorities is totally irrational.

Further more the adjustment of the appellants from lower post to the higher post can be taken as transfer from one cadre to another in the same department. Otherwise there was no justification with the respondents to get their services against requisition sent vide letter dated 19.09.2006.

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... The appellants are qualified persons, they are in total numbering about 135 Conductors. It is not in dispute that in the year 2006, 135 employees were adjusted against the post of Conductors and 28 against the post of Drivers. The appellants have gained sufficient experience, which cannot be ignored. When they opted for adjustment there was dearth of staff. The department after utilizing the services of the appellants for about five years, cannot say that they are outsiders and be sent to their parent post.

Further, once it has been held that adjustment of the appellants was virtually a transfer from one post to another post within the same department, it was incumbent upon the respondent authorities to grant them opportunity of hearing before passing adverse order against them, which was not done.

In view of the facts mentioned above, the appeals are allowed. Order dated 25.04.2013 passed by learned Single Judge is set aside. The appellants be adjusted as Grade I Drivers/Conductors as per rules.

At this stage, counsel for the appellants very fairly state that let benefit of continuous service be granted to the appellants. However, they shall not claim any monetary benefits except notional calculation.”

After going through the above judgment rendered by the Division Bench of this Court, I find that the case of the petitioner is fully covered by the same.

In view of the above, orders dated 6.6.2012 (Annexure P-8) and 10.7.2012 (Annexure P-7) are quashed. The petitioner is directed to be adjusted as a conductor as per rules. He is also held entitled to continuity of service but no backwages except notional placement.

The writ petition stands allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

13.08.2015
rajeev