

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9674 of 2014

Date of decision: 17.09.2015

Union of India & another

.....Petitioner(s)

Versus

Raj Kumar & others

.....Respondent(s)

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

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

* * *

Present: Mr. Nitin Kumar, Advocate for the petitioner(s).

Mr. Aman Chaudhary, Advocate for respondent No.1.

DARSHAN SINGH, J.

1. The present civil writ petition has been preferred under Articles 226/227 of the Constitution of India for the issuance of any appropriate writ, direction or order especially in the nature of certiorari quashing the impugned orders dated 14.1.2013 (Annexure P-4) passed by respondent No.3 in Original Application No.646/PB/2011 filed by respondent No.1, as also the subsequent order dated 25.3.2014 (Annexure P-6) passed by respondent No.3 in Review Application No.61/2013 filed by the petitioners.

2. Respondent No.1 Raj Kumar working as Tindal Grade-I filed O.A No.646/PB/2011 before respondent No.3-the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called 'the Tribunal') challenging the order dated 18.3.2010 whereby respondent No.2-Joginder Singh was promoted as Master Crafts Man (MCM) and sought directions to the petitioners to consider and appoint him as MCM with effect from respondent No.2 was appointed as MCM. It was the case of respondent No.1 in the OA that he was senior and most eligible candidate to be considered for vacancy against which respondent No.2 was promoted as MCM. It was pleaded in the OA that respondent No.2-Joginder Singh became Diesel Crane Driver Grade-I w.e.f. 4.5.2001 whereas respondent No.1 became Tindal Grade-I 4.8.1985 and consequently, he was senior to respondent No.2 and thus, entitled to be promoted to the post of MCM which fell vacant on 30.6.2003 on the retirement of one Bhajan Singh. It was further pleaded that Tindal Grade-I and Diesel Crane Driver Grade-I were the feeder cadre for promotion to the higher post of Master Crafts Man.

3. The petitioners had contested the claim of respondent No.1 that both the cadres are separate and distinct. Tindal and Diesel Crane Driver constitute feeder cadre for the post of MCM. however, the members of Tindal category and Diesel Crane Driver category are entitled to be promoted as MCM against the post of MCMs falling to the categories of Tindals and Diesel Crane Drivers categories. Before 1.11.2003 there was only one post of MCM in

Crane Section and after 1.11.2003, two posts of MCMs have arisen i.e. one for Tindal category and one for the Diesel Crane Driver category. The members of Tindal Category were not entitled to be considered for the post of MCM against Diesel Crane Driver category and vice versa. It was further pleaded that respondent No.1 belonged to Tindal category whereas respondent No.2 belonged to the Diesel Crane Driver category. So, he had no right of consideration for promotion to the post of MCM w.e.f. 18.3.2010 i.e. the day when respondent No.2 was promoted as MCM in that category.

4. The learned Tribunal vide impugned order dated 14.1.2013 allowed the application filed by respondent No.1 quashing the order granting promotion to respondent No.2. The petitioners were directed to consider the appointment of respondent No.1 to the post of MCM with effect from the date when the appointment had been given to respondent No.2 along with the monetary benefits. The petitioners also moved the Review Application No.61/2013 which was also dismissed by the learned Tribunal vide impugned order dated 25.3.2014. Hence, this petition.

5. We have heard Mr. Nitin Kumar, learned counsel for the petitioners, Mr. Aman Chaudhary, learned counsel for respondent No.1 and have meticulously perused the paper book.

6. Learned counsel for the petitioners contended that the impugned orders passed by the learned Tribunal are illegal and based on misconception of the facts. He contended that earlier there

was only one post of MCM. The restructuring of the cadre has been taken place and after 1.11.2013, one more post of MCM was created i.e one for the Tindal category and one post for the Diesel Crane Driver category. The members of the Tindal category were not entitled to be considered for the post of MCM against the Diesel Crane Drivers category and vice versa. He contended that the feeder cadres for promotion to MCM were separated w.e.f. 1.11.2003. Respondent No.1 belonged to Tindal category and respondent No.2 belonged to Diesel Crane Driver category. Respondent No.1 had no right to be considered for the post of MCM falling vacant for the category of Diesel Crane Driver. He contended that against the post which fell vacant on 30.6.2003 on account of retirement of one Bhajan Singh, one Govardhan Dass, who was senior to respondent No.1, was promoted on 24.9.2004 w.e.f. 1.11.2003. Respondent No.2 was promoted on 18.3.2010 against the post coming into existence w.e.f 1.11.2003 as a result of restructuring of cadre and it was meant for the category of the Diesel Crane Drivers for which respondent No.1 cannot have any claim. He contended that the learned Tribunal has wrongly observed that the post against which respondent No.2 was promoted had fallen vacant on 30.6.2003 i.e before 1.11.2003. Thus, he contended that the impugned order is illegal.

7. On the other hand, learned counsel for respondent No.1 contended that respondent No.1 was admittedly senior to respondent No.2. He further contended that in the written statement filed by the

petitioners to the OA, it was mentioned that two more posts of MCM were created w.e.f. 1.11.2003. In this way, there will be three posts and respondent No.1 deserves to be promoted against that post. Thus, he pleaded that there is no illegality in the orders passed by the learned Tribunal.

8. We have duly considered the aforesaid contentions.

9. There is no denial to the facts that respondent No.1 was working as Tindal Grade-I and respondent No.2-Joginder Singh was working as a Diesel Crane Driver Grade-I with the petitioners. It is also not disputed that prior to 1.11.2003, the Tindal Grade-I and the Diesel Crane Driver Grade-I used to be the feeder cadre for promotion to the post of MCM. It is even admitted in the OA filed by respondent No.1 that restructuring of the cadre took place w.e.f. 1.11.2003 and as a result of restructuring, one more post of MCM came into being in addition to the earlier one. The plea raised by the learned counsel for the petitioners that with the restructuring of the cadre, the cadre of Tindal Grade-I and Diesel Crane Driver Grade-I was separated has not been refuted by the other side. One post of MCM was to be filled from the category of Tindal and one post from the category of Diesel Crane Driver.

10. The impugned order shows that respondent No.1 is laying his claim against the post which fell vacant on 30.6.2003 on the retirement of one Bhajan Singh from the Tindal category. It was pleaded that respondent No.2 was wrongly promoted against that post. It appears that the whole confusion has arisen due to the

information supplied by the Public Information Officer-cum-Deputy Chief Engineer/Land, Northern Railway Baroda House, New Delhi under the Right to Information Act (Annexure A-13) wherein it has been mentioned that the post of MCM fell vacant after retirement of Bhajan Singh on 30.6.2003. However, against the said post Joginder Singh was promoted as MCM but this information is factually incorrect as Sh.Govardhan Dass belonging to Tindal category was promoted as MCM against the post becoming available on retirement of Bhajan Singh on 30.6.2003. Respondent No.2- Joginder Singh was promoted only on 18.3.2010 against the post coming into existence w.e.f. 1.11.2003 as a result of restructuring of the cadre against the post to be filled from the Diesel Crane Driver category. The entire order passed by the learned Tribunal is based on the misconception of the facts assuming that respondent No.2 has been promoted against the post falling vacant on 30.6.2003 on the retirement of Bhajan Singh. The learned Tribunal in para No.4 of the impugned order dated 14.1.2013 observed as under:

“In view of the apparent position that the separation of the two feeder cadres came about only w.e.f. 01.11.2003 and the relevant post fell vacant on 30.06.2003, it cannot be disputed that the inter-se seniority will rule the roost. There can, thus, be no escape from the conclusion that the grant of promotion to private respondent deserves to be invalidated for the simple reason that he was junior

to the applicant. If the relevant position had fallen vacant during the post 01.11.2003 period, things would have been entirely different inasmuch as it would have been the individual intra feeder cadre seniority which would have determined the issue of promotion.”

11. From the above observations of the learned Tribunal, it comes out that it has been taken that the relevant post has fallen vacant on 30.6.2003 i.e. before separation of two feeder cadres which came about only w.e.f. 1.11.2003 and at that time, the inter se seniority was to be considered for promotion to the post of MCM. The learned Tribunal itself has mentioned that if the relevant posts had fallen vacant during the post 1.11.2003 period, the things would have been different. From the undisputed facts, it comes out that the posts which had fallen vacant on 30.6.2003 due to retirement of Bhajan Singh had gone to Goverdhan Dass from the Tindal category who was admittedly senior to respondent No.1. The second post of MCM created w.e.f. 1.11.2003 on account of restructuring of the cadre was meant for the Diesel Crane Driver category for which respondent No.1 cannot have any claim due to separation of the feeder cadres. Respondent No.2-Joginder Singh has been promoted against the post which was created w.e.f. 1.11.2003 as a result of restructuring of the cadre and not against the post which fell vacant on 30.6.2003 on account of retirement of Bhajan Singh belonging to Tindal category. Respondent No.1 cannot claim the promotion to the

post of MCM which was to be filled from the Diesel Crane Drivers category. The plea raised by the learned counsel for respondent No.1 that there were three posts of MCM is even against the pleading of respondent No.1 in the O.A. In para No.4 (VI) it has been mentioned that as a result of restructuring, one more post of MCM came into being in addition to the earlier one post. So, this plea deserves outright rejection.

12. Consequently, the promotion of respondent No.2- Joginder Singh vide order dated 18.3.2010 against the post which arose due to restructuring of the cadre w.e.f. 1.11.2003 cannot be held to be invalid. Resultantly, the petitioners cannot be directed to consider the appointment of respondent No.1 to the post of MCM against which respondent No.2 was promoted. Thus, the impugned orders passed by the learned Tribunal cannot be sustained in the eyes of law.

13. Thus, keeping in view our aforesaid discussion, the present writ petition is hereby allowed and the impugned orders dated 14.1.2013 and 25.3.2014 are hereby quashed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

September 17, 2015
ps