

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

**Regular Second Appeal No.5059 of 2013 (O&M)
Date of decision : 11.05.2015**

Satish Kumar ...Appellant
versus

State of Haryana & others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. A.P.Bhandari, Advocate for the appellants.

RITU BAHRI, J (Oral)

CM No.13604-C of 2013

There is a delay of 111 days in filing the appeal.

For the reasons stated in the application, the same is allowed
and the delay of 111 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.5059 of 2013

The suit filed by the appellant/plaintiff has been partly
decreed by the lower appellate Court, vide judgment and decree dated
19.02.2013.

The plaintiff had filed a suit directing defendants No.1 to 3
to promote him on the post of Assistant Fitter with effect from the date
his juniors were promoted.

The plaintiff was appointed as Helper Motor Mechanic on

02.09.1993 and thereafter he was regularised as Helper Motor Mechanic with effect from 01.02.1996, vide order dated 02.03.2004. The plaintiff was selected in the category of ex-servicemen. He was promoted as Assistant Fitter with effect from 29.06.2004. The case set up by him was that Sarvshri Maya Ram, Sudhir Kumar, Arjun Singh and Jaiveer (defendants No.4 to 7) were earlier working with other Depots as Helper Motor Mechanics and not in Kurukshetra Depot. They got themselves transferred to Kurukshetra Depot later on. Their promotion has been shown w.e.f. 01.08.1998, 01.08.1998, 01.05.1992 and 01.02.1996, respectively as Assistant Fitters whereas they were appointed as Helper Motor Mechanic in other depots. According to the instructions issued by the Transport Commissioner, Haryana, Chandigarh, vide notification dated 23.05.1995, the persons working in their respective depots shall maintain their seniority in their own depots. However, when the employee get himself transferred to the other depots, he shall lose his seniority in his previous depot and his seniority shall be maintained from the date he joined in the new depot. Thus, defendants No.4 to 7 had no right to get their seniority fixed from the previous date of employment and they being junior to the plaintiff had been wrongly promoted as Assistant Fitter from the back date. Defendant No.8 Moti Ram had been shown in the seniority list at Sr. No.8 and he was regularised as Helper Motor Mechanic on 08.11.1996 and he was promoted as Assistant Fitter with effect from 29.06.2000. Since Moti Ram had been regularised with effect from 08.11.1996 and plaintiff being senior to Moti Ram had a

prior right to the post of Assistant Fitter.

Sheel Kumar and Raj Kumar (defendants No.9 and 10) were given promotions as Assistant Fitter with effect from 1998, vide letter dated 16.04.2008. The trial Court dismissed the suit of the plaintiff on the ground that his services had been regularised, vide order dated 02.03.2004 as Helper Motor Mechanic and subsequently he was promoted as Assistant Fitter on 29.06.2004 as per the availability of the post. He was regularised on 02.03.2004 with effect 01.02.1996. The suit of the plaintiff was dismissed by the trial Court on the ground that defendants No.4 to 8 were promoted on the post of Assistant Fitter between the year 1998 to 2000 as per availability of the post. The promotions were made keeping in view their experience of three years as Helper Motor Mechanic at the relevant time. Moreover, their promotions were made keeping in view the seniority list prepared, vide document Ex.P13.

On appeal, the lower appellate Court partly decreed the suit by giving the directions to respondents to consider the case of the plaintiff for promotion to the post of Assistant Fitter from the date when Jaivir, Arjun and Moti Ram were promoted as Assistant Fitter. However, Maya Ram and Sudhir Kumar were declared senior to the plaintiff as Assistant Fitter.

Counsel for the appellant has argued that Maya Ram and Sudhir Kumar promoted 01.08.1998. Date of appointment of the plaintiff is 02.09.1993. Hence the finding of the lower appellate Court

that both these employees were senior to the plaintiff does not require any interference and the suit has been rightly decreed by giving the directions to the respondents to re-fix the seniority afresh by considering the plaintiff along with Jaivir, Arjun and Moti Ram.

Dismissed.

11.05.2015
Vinay

(RITU BAHRI)
JUDGE