

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

CWP No. 2316 of 1997

Date of decision: 25.7.2016

Prem Parkash

... Petitioner

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

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

RAJIV NARAIN RAINA, J.(Oral)

1. This is one of the five cases which is shown in the urgent list for disposal from the oldest cases pending on my regular board. No one appears on behalf of the petitioner. This Court would not wait further.

2. Heard Ms. Shruti Jain Goyal on merits and perused the paper-book.

3. There is no doubt that there are no service rules governing the issue involved in this case. The petitioner was appointed as Store Mate on November 1, 1976 on work charge basis and his services were regularized as Beldar on November 28, 1983. On the other hand, respondent No.4 was appointed as Peon on December 22, 1978 and was promoted as Work Munshi in December, 1992. Vide interim order dated October 14, 1997, the Division Bench of this Court by an absolute mandamus rejected the petition challenging to the promotion of

respondent No.4 since the 4th respondent was working on the post of feeder post of Clerk and was promoted as Work Munshi. The prayer for quashing the promotion of the 4th respondent was declared as highly belated. Hence, that aspect cannot be re-agitated or re-visited. The only issue which the Bench left open for consideration at a regular hearing was whether the petitioner had a right to promotion from Beldar to Store Munshi which has not been considered by the department. An affidavit was called from the State which was filed on November 19, 1997 wherein a categorical statement has been made in affidavit on behalf of the 3rd respondent that no Beldar has been promoted to the rank of Store Munshi or higher rank in W.S. Feeder Division, Rohtak since 1992 to-date in this division as per record and best of knowledge of the deponent. The petitioner filed a counter-affidavit which led to the filing of reply to the replication by the State dated November 19, 1997 in which it has been explained in para 3 as follows:-

“3. That para no.3 of the application is admitted to the extent that in the notification dated 21.7.1980, the pay scale of Group 'D' Employees such as Beldar, Mate, T. Mate, Chowkidar, Peon, Jamadar, Sweeper, Mali, Gangman, Bearer and Attendant etc. are equal. But there is difference in duties of each group 'D' employees. The duties as Beldar is specified in manual of Administration Chapter 8 Rule 8.71. The photocopy of Rule 8.71 is attached as Annexure R-1. The duties of filed staff like Beldar, is supervised by the Mate as per rule 2 and 3 Chapter 2 of Manual of Administration. Therefore, the promotion from Beldar is not

required to be given as Store Munshi but is to be supposed to be given as Mate, if merit of individual permits. As regards the post of peon, it is the posts of Ministerial cadre and is liable to be promoted to Store-Keeper/Store Munshi/Clerk as per merit.

4. Tagged to the affidavit is enclosed a reproduction of Clause 8.63 etc. of the Manual of Administration (Chapter 8) as Annex I which are the applicable conditions of service in absence of rules of service governing the posts under consideration. Clause 8.71 of the Manual deals with and describes the duties of a Canal Patrol. It prescribes as follows:-

“8.71. A Canal Patrol works directly under the instructions of a Canal Overseer or his representative, Mistri or Mate. Within the limits of his charge, his duties are:-

- (a) to ensure the safety of the canal with its connected masonry works, railways, banks, roads avenues and plantations and to prevent any damage thereto.
- (b) To keep jungle growth on canal banks and plantations under control to maintain the railways banks and roads in a satisfactory state of repairs to water trees in avenues and plantations and
- (c) to prevent cattle trespass in irrigation works within the limits of his charge.”

5. From the Manual of Administration, it is argued by Ms. Shruti Jain Goyal for the State that a Beldar can be promoted only as a Mate and not a Work Munshi as claimed in this petition since there is no

channel of promotion. No other rule or regulation has been shown by the petitioner in the body of the petition which entitles him to be promoted as Work Munshi and there is cited no administrative precedent on the point and therefore it is not within the jurisdiction of this Court to create an administrative precedent through a judicial order in a matter involving involving promotional policy.

6. No ground to interfere is made out. No merit. Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

25.7.2016
monika/manju