

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9003 of 1999 (O&M)

Date of Decision: 08.12.2016

Om Parkash

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Ashish Gupta, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. Prior to 1995 there were no rules governing service in the Haryana Roadways and employees were in non-rule territory. Ram Karan, Washing Boy on a request application submitted by him was re-designated as Helper Mechanic on May 04, 1984. Based on this administrative precedent, the petitioner who is senior to Ram Karan as Washing Boy made an application likewise for change of designation on January 11, 1989. His case was processed and the following remarks were put on his application in the noting:-

“Subject : Application for change of designation.

Sh. Om Parkash, Washing Boy has given the application for his service. He is on the post of Washing Boy for 7 years and working as helper in mechanical branch for 6 years approximately. He has too much knowledge about the mechanical helper. The employees has given the application to change his designation from Washing Boy to mechanical helper. The application of the employee is attached for next necessary action.

Sd/- 13.1.89

*Sd/-Report of Workshop Manager
H.M./Foreman Report.
Sd/- 4.3.*

This employee is useful for helper and doing work as helper.

Sd/- Sd/-

Report of H.M. and F.M. was asked. They had written that employee is able for helper.

Sd/-EA Sd/- 4.3.89

Subject: For changing designation (Sh. Om Parkash, Washing Boy).

Report of the last page order, is as under:-

- 1. This time, the post of helper is vacant.*
- 2. It has happened before also that Washing Boy and helper has same pay scale as seen in the record, which is 750-12-870-EB-14-940.*

Hence, submitted for order.

Sd/-4.3.89

Accordingly to above said report, the post of helper is vacant. But any employee will reinstate from the court which does not effect on this post is the pay scale of both the posts is same? You are efficient officer of this post. Keeping in view about the above facts, if you think fit, then kindly change the Washing Boy to Mechanical Helper, because, according to Workshop Manager, the helper knows the mechanical work. The changing will be right hence, order.

Sd/-4.3.89

Accordingly to prior permission of the last page, true copies with sign are attached.

Sd/-4.3.89

Sd/-4.3.89

Attach the instructions of the Government.

What are the conditions of two helpers.

Sd/-4.3

This employee is working on the post of Washing Boy since 22.6.82 and employee is 9th pass and fully knows the work of the helper. Because, the workshop Manager has approached to change the post of Washing Boy to helper in

his report. According to Government rules/instructions 8th pass can become a mechanical helper and he fulfills all the Government conditions. The pay scale of both the posts is same and you are efficient officer for both the posts. Keeping in view of the above facts, it is right to change the employee to mechanical helper from Washing Boy.

Sd/- Supdt. 4.3.89”

2. The recommendation made to the higher authorities was favourable to the petitioner but the ultimate result of the exercise ended in rejection vide order made on March 05, 1989 but the same was not conveyed to him in writing. The legal effect of which was that it was no order in the eyes of law capable of being challenged in Court. The seniority list of Helpers reveals that the name of Ram Karan figured at seniority position 37 as against the name of the petitioner figuring at Sr. No.21. The petitioner was appointed to service as a Washing Boy on June 22, 1982 whilst Ram Karan later on May 14, 1983. The seniority list was common to Washing Boy, Helper (Tyreman) and Helper (Mechanical). The seniority list was issued on December 24, 1987.

3. Aggrieved by discriminatory treatment as against Ram Karan the petitioner approached this Court in CWP No.800 of 1998 impleading Ram Karan as the 4th respondent in the petition. The prayer was for directions to promote the petitioner as Assistant Fitter from the date on which person juniors to him were promoted as Mechanic/Assistant Fitter. He claimed consequential benefits also towards fixation of pay and demanded payment of arrears of salary etc. The writ petition was disposed of by the Division Bench on January 20, 1998 without going into the merits of the case at the stage when the petition was brought. Their Lordships

considered it appropriate to dispose of the petition by directing the General Manager, Haryana Roadways, Jind to consider and decide the representation of the petitioner dated May 15, 1997 within a period of four months from receipt of a copy of the order either from the Court or from the petitioner whichever was earlier. It was ordered that in case the petitioner was found entitled *prima facie* to the relief claimed then a final decision be taken in the presence of persons likely to be effected.

4. In implementation to the directions of this Court, the General Manager, Haryana Roadways, Jind passed the impugned order dated July 02, 1998. The case was rejected citing rules of service, 1995 which had by then come into force which required candidates for the subject matter posts to be Middle Pass with experience of three years to be considered eligible for promotion while the petitioner was not. The General Manager was of the view that because there was no provision in the rules for promotion to the post of Assistant Fitter from the post of Washing Boy the claim could not be accepted. Hence the petitioner was not entitled to promotion on the basis of Ram Karan's promotion as Ram Karan had been redesignated as Helper (Mechanic). The case of Ram Karan has been explained in the order giving out that Ram Karan was put to a Test while he was serving as a Washing Boy and was re-designated as Helper Mechanic. Thereafter, he was promoted to the post of Assistant Fitter on the basis of seniority cum merit by considering his seniority from May 04, 1984 instead of May 14, 1983 when he was appointed as a Washing Boy after his name was sponsored by the local Employment Exchange. The period spent on the post of Washing Boy was not considered in the case of Ram Karan since he was re-

designated on May 04, 1984.

5. Aggrieved by this order, the present petition was filed in the year 1999 praying for quashing the order and for consequential reliefs.

6. Learned counsel for the petitioner submits that both his client and Ram Karan were initially appointed as Washing Boys and the petitioner was senior between the two in the Class IV cadre. The seniority list indisputably is common between Washing Boy and Helper Mechanic and, therefore, both stand in the identical position. Ram Karan also applied for re-designation, like the petitioner. If Ram Karan was put to a test then there is no reason why the same test should not have been conducted for him then there would have been equal opportunity to both. This is castigated as unfair discrimination without reasonable classification distinguishing the two employees similarly placed. In the affidavit filed pursuant to the interim order passed by this Court on September 09, 2016 it has been admitted that the petitioner was not put to test since his case had been rejected by the General Manager, Haryana Roadways, Jind.

7. Ms. Shruti Jain Goyal for the Haryana Roadways has been hard pressed to explain the rationale of discrimination practiced by the Haryana Roadways, Jind in picking up Ram Karan for preferential treatment [both ineligible under the 1995 Rules] on a mere self seeking application by selectively holding a Test to re-designate him as Helper Mechanic to pave his way for promotional avenues that the post of Washing Boy did not offer. There appears to be no plausible reason why the request of the petitioner should not have been considered favourably even when the recommendations were in his favour. The factual position obtaining on

relevant days has been explained in para.6 of the affidavit which requires reproduction since it clinches the case of the petitioner to be accorded similar treatment which was wrongfully denied:-

“However, the same method was followed in the matter of petitioner also, but no reason of denial of change of designation by the then General Manager was available on the file.”

8. This eminently vindicates the stand of the petitioner that he was discriminated against arbitrarily. If the reason for change of designation is not available on file of the Government then there will be a presumption that the petitioner has been wronged inasmuch as being similarly placed he has been unfairly discriminated in the matter of re-designation as Helper from Washing Boy. The quest in this petition is one for being placed in a channel of promotion. Washing Boys do not earn promotions in service, while Helper Mechanics could be promoted as Assistant Fitters and then as further as Mechanic, which are posts in an ascending order of higher pay scale.

9. In view of the factual position of the file not responding to satisfy plea of discrimination raised by the petitioner then this Court has no option except to align the rights of the petitioner with Ram Karan to discontinue hostile and invidious discrimination amongst equals as Washing Boys by putting both in the same shoes. It is rather apparent that the General Manager, Haryana Roadways, Jind fell in grave error in his order by wrongly distinguishing the case of Ram Karan with that of the petitioner and, therefore, the officer violated the principles of equality in Article 14 of the Constitution of India. That apart, the General Manager, Haryana

Roadways, Jind violated equal opportunity principles in Article 16 when both the petitioner and Ram Karan were originally identically placed and one was made to steal a march over the other without just cause or legal justification. I have no doubt in mind that the wrong committed in the case of the petitioner has to be undone by putting him back in the same position as Ram Karan from the date the latter was re-designated as Helper conferring upon him a channel of promotion while the petitioner was left out of reckoning separated by the flimsy Test which was not prescribed, there being no rules but imposed out of the hat to achieve re-designation in the same class of service.

10. Ms. Goyal points out to hammer the point of delay submitting that Ram Karan made an application on January 16, 1984 and was re-designated on May 04, 1984 whilst the petitioner made an application five years later in 1989 and his representation was rejected on March 05, 1989. The argument may seem attractive at first blush to non-suit the petitioner on delay and laches but on a closer look when fundamental rights are involved in Articles 14 & 16 of the Constitution then a petition cannot be dismissed on the jejune grounds of delay and laches. Article 14 prevents discrimination, however large the gap of time may be and that is why the constitutional principles are unlike pure civil and statutory rights when limitations may come in the way of relief based on cause of action expiring for legal redress. There is another reason which compels me to adopt the primacy of equality principles in Article 14 of the Constitution of India in this case is that rights cannot be measured from dates of applications made by employees when the rights of others are being invaded secretly behind

the back of the person aggrieved who was not offered to sit in the test by prior information and public notice inter-department for all eligible Washing Boys to offer themselves for consideration of their cases for re-designation. The fact being that the orders passed in the case of Ram Karan re-designating him as Helper Mechanic were not conveyed to him or brought to his knowledge to furnish a cause of action to him to have followed suit and make a request like Ram Karan. Then it matters little whether the petitioner made a representation five years after Ram Karan.

11. Besides, in para.7 of the additional affidavit dated September 28, 2016 it is disclosed that one Bijender Singh-respondent No.5 to this petition was initially appointed as a Helper Tyreman through the Employment Exchange in May 1983 and on his representation for change of designation the date April 03, 1991 was assigned to him. However, on May 29, 1991 Bijender Singh's designation was changed from Helper Tyreman to Helper Mechanic and thereafter he was promoted as Assistant Fitter in higher pay scale on April 12, 1997 and further as Mechanic on January 15, 2013. Therefore, even if the petitioner is re-designated as Helper Mechanic on March 05, 1989, the date when the impugned order was passed, his promotional dates as Assistant Fitter and then Mechanic will remain the same as assigned to Ram Karan which are April 12, 1997 and January 15, 2013 respectively which were the dates Bijender Singh got from Ram Karan-respondent No.4. This, leaves no ground to ponder or doubt that the petitioner has a case for interference on the merits to achieve equality of opportunity and equal protection by upholding Article 14 instead of discrediting the constitutional provision and throwing it to the winds. To

achieve this end, conducting the Test is not sufficient and acceptable differentiation especially when Bijender Singh was not put to a Test and yet achieved the goal and earned promotions. Moreover, the type and quality of the test is not known or explained by the respondents and has to be disregarded as material factor. If the status quo is maintained, the petitioner will never earn a single promotion in his career and retire as a Washing Boy, which is the lament and the heart burn expressed in this case which requires to be remedied.

12. As a result of the preceding discussion, this writ petition is allowed. The impugned order dated July 02, 1998 (P-10) is quashed. The petitioner is held entitled to be re-designated as Helper Mechanic and then promoted as Assistant Fitter etc. from the dates when his junior Ram Karan was re-designated and promoted to the higher posts. Accordingly, the General Manager, Haryana Roadways, Jind/competent authority is directed to pass necessary office orders in implementation of the directions hereinbefore. The arrears of difference of salary of retrospective promotions be determined and paid to the petitioner actually from the date when the petitioner approached this Court in the first writ petition i.e. CWP No.800 of 1998 and prior to that the consequential benefits will accrue notionally. Let the final orders be passed and payments made within three months from the receipt of certified copy of the order.

(RAJIV NARAIN RAINA)
JUDGE

08.12.2016
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Whether speaking/reasoned Yes

Whether reportable Yes