

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

Date of decision: 01.09.2016

CWP No.14418 of 2012

Varinder Kumar

...Petitioner

Vs.

State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

Mr. A.P.S.Mann, Addl. AG, Punjab.

Ms. Deepali Puri, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

It is the categorical stand of the High Court in its written statement put in to contest the case that there is no channel of promotion from Group B to Group A service in the cadre of Judgment Writers (Grade-I). Accordingly, the representation of the petitioner was duly considered by the Hon'ble Administrative Judge of Sangrur Sessions Division and rejected vide order dated 13.07.2012 and the petitioner was duly informed of the decision. The stand of the High Court is recorded in Para.8 of the written statement, which reads as follows:

“8. That in reply to the Para.8, it is submitted that the petitioner is serving in Group B being Judgment Writer (Grade-I) in the Time Scale of Rs.10300-34600 and has sought promotion to Group A Category and as per the own case of the petitioner there are Group A post at the District Level in the Cadre of Stenographer and no promotions to such posts have been made. The representation of the

petitioner was duly considered and under order dated 13.07.2012 passed by the Administrative Judge of Sangrur Sessions Division, the same was rejected as there is no Group A category post in the cadre of Stenographer and the petitioner was duly informed of the same.”

In view of the rule position, no relief is admissible to the petitioner, as claimed.

Mr. A.P.S. Mann, learned Additional Advocate General, Punjab, appearing for the State of Punjab – the employer of the petitioner though working under the overall control of the High Court, has referred to the short affidavit filed by the Director, Social Security and Women and Child Development Department, Punjab asserting that there are no executive instructions to the effect that a physically disabled employee, like the petitioner is, should be adjusted in any other Department of the State of Punjab in case there is no promotional post available in his parent Department. This reply Mr. Mann submits clarifies the position on the subject and is only meant for bringing the factual position to the notice of the Court. Even on this account, relief is not available to the petitioner as claimed in the petition to redeploy him to a department where he may have chances of further promotion.

On the other hand, the argument of Mr. Sanjiv Gupta in support of the claim for promotion while appearing for the petitioner is that employees protected by the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as interpreted by the Supreme Court in Union of Indian & another Vs. National Federation of the Blind & others, (2013) 10 SCC 772 and Justice

Sunanda Bhandare Foundation Vs. Union of India & another, AIR 2014 SC 2869 cases holding that disabled persons have a right in promotion apart from direct recruitment to the extent of 3% of the posts calculated on the basis of the total number of posts that make a cadre may not work in the present scenario even when the Supreme Court observed that since the reservation to the disabled is horizontal reservation, they have a right to be placed in the respective roster points reserved for the category to which they belonged. There can be no dispute with the proposition, but the facts of this case are different since there is no ladder of promotion provided from Group 'B' to Group 'A' service in absence of enabling rules or instructions to carry a person via Section 33 of the 1995 Act and change his class and post to higher level. This upward movement can be achieved by nothing short of amendment of the rules of service providing promotional avenues. The Court by causing interference by acceptance of the prayer will be entrenching upon policy making, which it has no jurisdiction to alter. Creation of channels for promotion is a policy matter governed by rules of service framed under proviso to Article 309 of the Constitution and therefore, the argument advanced by Mr. Gupta fails to persuade me to create a channel of promotion, to change class and category of post, step up pay scale etc. by issuance of a writ of mandamus.

Consequently, finding no merit in the stand of the petitioner, the petition has to be dismissed. It is ordered accordingly.

However, the petitioner would be free to take up the issue with the authorities for making suitable amendments in the Rules. If such a request is made, due attention would be paid as thought befitting the circumstances in order to overcome stagnation in service. If the exercise is undertaken then I have no doubt that the authorities would consult the

decision of the Supreme Court in Dr. Ms. O.Z. Hussain Vs. Union of India and ors, AIR 1990 SC 311: 1989 SCR Suppl. (2) 177 pointing out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective.

01.09.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*