

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20782 of 2012

Date of Decision:- 05.08.2016.

Akhilesh Kumr Roy

.....Petitioner

Versus

Bhakra Beas Management Board and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Pawan Kumar Sharma, Advocate for the petitioner.

Mr. Dinesh Ghai, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant petition, petitioner has prayed for issuance of writ of certiorari quashing the show cause notice, reversion order and letter vide which the case of the petitioner for promotion as Hindi Typist has been rejected dated 11.1.2010, 30.3.2010 and 3.10.2012 (Annexures P-5, P-16A and P-15).

2.) The petitioner was appointed as a Mali on 18.1.2000. Thereafter he was posted as Peon on 24.8.2007. He was promoted to the post of Clerk on 24.3.2009. By impugned notice/orders, the respondents proceeded to withdraw the promotion order dated 24.3.2009 and revert the petitioner to the post of Peon on the score that his promotion was contrary to Para 13 of the Notification dated 24.6.1994. Para 13 reads as follows:-

“13. Seniority – Seniority inter-se of members of the Service shall be determined by the length of continuous service on a post in the service: Provided that seniority inter-se of the employees on the posts in each sub group of a group or a group shall be determined by the length of continuous service on a post in that sub-group/group;

Provided further that in the case of persons appointed by direct recruitment the order of merit determined by the Staff Selection Committee shall not be disturbed in fixing the seniority;

Provided also that the inter-se seniority of Ex-Central Government Employees of Beas Construction Board on their fresh appointment in the Board shall remain intact;

Provided further that in the case of two or more persons appointed on the same date; their seniority shall be determined as follows:

(a) a person appointed by direct recruitment shall be senior to a person appointment otherwise;

(b) a person appointed by promotion shall be senior to a person appointed by transfer from other groups/sub groups;

(c) in the case of persons appointed by promotion or by transfer from other groups/sub groups seniority shall be determined according to the seniority of such persons in the appointments from which they were promoted or transferred; and

(d) in the case of employees appointed by transfer from different groups/sub groups their seniority shall be determined according to pay preference being given to a person who was drawing a higher rate of pay in his previous appointment : and if the rates of pay drawn are also the same, then by the length of their service in these appointments and if the length of such service is also the

same, the older person shall be senior to the younger person.

Note: (1) In case of an employee whose period of probation is extended under regulation 7, the date of appointment for the purpose of this regulation shall be deemed to have been deferred to the extent the period of probation is extended.

(2) Joint seniority lists of employees working against various posts in sub-groups or group shall be maintained and circulation by the Chief Engineer(s) to be specified by the Board.”

3.) The post of Clerk is governed by Bhakra Beas Management Board Class-III and Class-IV Employees (Recruitment and Conditions of Service), Regulations, 1994. The post of Clerk would be filled up by direct recruitment to the extent of 80% and 20% from the Class-IV employees. Class IV employees consists of Restorers, Duplicate Machine Attendants, Pattedars etc. Therefore, Clerk post is not filled up by any single cadre or a post of Class-IV employees so as to interpret Item No.13 of the 1994 Notification that in a particular post is to be taken into consideration. Moreover, 1994 Notification cannot override Bhakra Beas Management Board Class-III and Class-IV Employees Regulations, 1994. In view of these facts and circumstances, petition is allowed. Impugned Annexures P-5, P-16A and P-15 are set aside. The respondents are directed to treat the petitioner that he was a Class-IV employee for the period from 18.1.2000 to 24.8.2007 so as to give the benefit of promotion w.e.f. 24.3.2009. At this stage, learned counsel for the petitioner submitted that due to the impugned orders, monetary benefits have been withheld. If the monetary benefits have not been extended from time to time with reference to revision of pay scale

etc., the same shall be calculated and disbursed the difference of pay within a period of three months from today.

(P.B. BAJANTHRI)
JUDGE

August 5, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes

Whether Reportable:-

No