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

CWP No.16872 of 2014
Date of Decision: **February 18, 2016**

Karamveer and others ...Petitioner
versus
Haryana Vidyut Parsaran Nigam Ltd and anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Randeep Singh, Advocate for the petitioner.

Mr.P.S.Poonia, Advocate for respondent No.1.

Mr.Sandeep Singh, Advocate for respondent No.2.

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HARINDER SINGH SIDHU, J.

The petitioners were appointed as Junior Accountants in October/November, 2010 with the Haryana Vidyut Parsaran Nigam Limited – respondent No.1 under the recruitment and promotion policy of Audit and Accounts Wing notified vide HSEB notification dated 9.3.1990 (Annexure P-1) read with amendments vide office order dated 23.6.2008 (Annexure P-2).

It is their case that as per the aforesaid Policy, 50% of the posts of Divisional Accountants are to be filled up by direct recruitment. The remaining 50% of the posts of Divisional Accountant are to be filled up by promotion.

The 50% promotional posts of Divisional Accountants are to be filled by promotion on seniority-cum-merit basis from amongst the officials of various categories including Junior Accountants having passed Departmental Accounts Examination (SAS Part-I) as prescribed by respondent No.1 and the seniority for the promotion of Divisional

Accountants is to be fixed from the date of passing of exam. Respondent No.1 conducted Departmental Accounts Examination (SAS Part-I) in November, 2011 for the purpose of promotion to the posts of Divisional Accountant, which the petitioners successfully cleared on 4.4.2012 (Annexure P-3). The petitioners were not promoted despite passing of the aforesaid Examination. On their representation for promotion, the matter was sent to the LR/HPUs for legal opinion, who sent back the matter to respondent No.1 with the approval dated 16.1.2013 (Annexure P-6) that promotion from the post of Junior Accountant to Divisional Accountant may be made on regular basis subject to certain conditions.

The grievance of the petitioners is that they are not being promoted despite having passed the Departmental Accounts Examination, whereas, one Sh.Ashwani Chouhan, Assistant who had passed the said examination on 4.4.2012 in the same batch of the petitioners has been promoted as Divisional Accountant w.e.f. 2.5.2012 (Annexure P-4) and one Pooja Lathwal, UDC – respondent No.2, who passed the said Examination on 31.12.2013 has been promoted as Divisional Accountant vide office order dated 11.2.2014 (Annexure P-9). The petitioners had sent a legal notice dated 22.02.2014 (Annexure P-10) requesting that they be promoted but their claim has been rejected vide the reply dated 23.04.2014 (Annexure P-11) .

Hence, the present writ petition seeking a direction to the respondents to promote the petitioners.

Upon notice, respondent No.1 has filed reply stating that a clear distinction has been made in the criteria provided in the policy

(Annexure P-1), which is to be followed for promotion to the post of Divisional Accountant from amongst the Accountants and for promotion from amongst other categories of employees in the event of non-availability of qualified Accountants. It is the stand of the respondents that Accountants shall be promoted to the post of Divisional Accountant on the basis of seniority-cum-merit after having passed Departmental Accounts Examination prescribed by the Board, whereas, in case of other categories of employees, the promotions to the post of Divisional Accountant will be made on seniority-cum-suitability basis. Qua Pooja Lathwal and Ashwani Chauhan, it is stated that they have been promoted irrespective of their dates of passing the requisite departmental examination and keeping in view their experience and length of service, as Accountants were not available. It is the case of the respondents that in case of employees other than Accountants, the date of passing the requisite Examination is inconsequential for the purpose of promotion to the post of Divisional Accountant in terms of the Policy (Annexure P-1).

I have heard Ld. Counsel for the parties and gone through the paper-book.

The relevant paras of the Recruitment & Promotion Policy of Audit & Accounts Wing are para 4.3, 4.4 and 4.5 and the same are reproduced below:

> "***4.3***: *Remaining 50% posts, shall be filled-up by promotion from amongst Accountants on seniority-cum-merit basis and having passed Departmental Examination as prescribed by the Board. In case, qualified Accountants, are not available for appointment as Divisional/Revenue-Accountants, Junior Accountants/Accounts Clerk having passed Departmental Examination as prescribed by the Board, shall be considered for promotion to the post of Divisional/ Revenue-*

Accountant, on seniority-cum-suitability basis.

4.4.*(with amendments/additions)* *The following categories of employees will be eligible to appear in the Divisional/Revenue Accountants/Section Officers (Part-I) Examination:-*

a) Apprentice/ Divisional/ Revenue Accountants

b) Commercial Assistants/ H.O.Assistants

c) Junior Accountants

d) Qualified UDCs

e) LDCs who have passed the Departmental Accounts Examination for Ministerial Estt. but have not so far been promoted as UDCs.

f) LDCs who have served for 10 years as LDCs but have not so far cleared the Departmental Accounts Examination for Ministerial Estt.

g) Meter Readers and Junior/Sr.Scale Stenographers who have cleared the Departmental Accounts Examination for Ministerial Estt.

h) Officials who have already obtained exemption marks in one or more papers of Divisional/Revenue Accountants Examination, Section Officer/Part-I Examination.

4.5. *The seniority of Accountants for promotion to the post of Divisional/Revenue-Accountant, shall be determined from the date of passing the Departmental Examination as prescribed by the Board for the post of Divisional/Revenue-Accountant."*

It is clear from a perusal of para 4.3 that 50% of the post of Divisional Accountants shall be filled by promotion from amongst Accountants who have passed the departmental examination on seniority-cum-merit basis. In case qualified Accountants are not available for such appointment, Junior Accountants/ Accounts Clerks who have passed the Departmental examination prescribed by the Board shall be considered for promotion on seniority-cum-merit basis.

As per para 4.5, the seniority of Accountants for promotion to the post of Divisional Accountant/ Revenue Accountant shall be determined from the date of passing the Departmental Examination as prescribed by the Board for the post of Divisional/ Revenue Accountant.

The petitioners claim that as they have passed the Departmental Accounts Examination on the same day as Ashwani Chouhan and prior to Pooja Lathwal-respondent No.2, both of whom have been promoted, they too ought to have been promoted.

This claim of the petitioners cannot be accepted on a plain reading of the para 4.5. which only prescribes that the seniority of Accountants for promotion to the post of Divisional Accountant/ Revenue Accountant shall be determined from the date of passing the Departmental Examination. This para does not apply to the promotion from amongst Junior Accountants/ Junior Clerks, etc. Hence, it is not possible to hold that seniority for the purposes of promotion from amongst Junior Accountants/ Junior Clerks has to be determined with reference to the date of their passing the departmental examination.

Other than the date of passing of the departmental examination of the petitioners and Ashwani Chauhan and Pooja Lathwal- respondent No.2, with whom they claim parity or precedence respectively for promotion, the petition is bereft of any other details of their service profile for any meaningful comparison, on the touchstone of seniority-cum-suitability, to demonstrate that the petitioners though more deserving have been wrongly denied promotion. Hence, there is no option, but to dismiss the claim for promotion solely with reference to the date of their passing the Departmental Accounts Examination.

Notwithstanding the above, it appears that the petitioners have a genuine grievance.

In the reply of the respondents dated 23.4.2014 (Annexure P-11) to the legal notice of the petitioners, it has been stated that the case for promotion of Junior Accountants who passed the Departmental Accounts Examination of SO Part-I to the post of Divisional Accountants was considered by the Competent Authority and it has been decided that-

> "*There are a number of issues w.r.t. Seniority with DAs and also inter se seniority within JAs. We need to frame policy. Plz.draft in consultation with CF".*

It was further stated that the revised Recruitment and promotion Policy in respect of Accounts & Audit Wing is under preparation and the case for promotion of Junior Accountants shall be dealt as per revised Recruitment and Promotion Policy notified by HVPNL.

Right to be considered for promotion as per the Rules governing the service is a fundamental right of an employee.

It appears that on account of some issues regarding the fixation of seniority of Junior Accountants for promotion to the post of Divisional Accountants, the Recruitment and Promotion Policy is under review. It is imperative that any such review be finalized expeditiously so that the case of the petitioners and other eligible Junior Accountants for promotion is not unnecessarily delayed.

Accordingly, this petition is disposed of with a direction to the respondents to finalize the revised Recruitment and Promotion Policy in relation to promotion of Junior Accountants at the earliest, so that the promotion cases of the petitioners and other eligible Junior Accountants can be considered expeditiously.

February 18, 2016 **(HARINDER SINGH SIDHU)**
gian **JUDGE**