

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

**CWP No.24787 of 2012
Date of decision: 15.07.2016**

Harshverdhan Bali and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.K. Bhardwaj, Advocate,
for the petitioners.

Mr. Keshav Gupta, AAG, Haryana.

Ritu Bahri, J.

The petitioners are seeking quashing of the order dated 07.09.2010 (Annexure P-6), whereby respondents have denied the benefit of relaxation in the rules for promotion to the post of Divisional Head Draftsman and Circle Head Draftsman.

Petitioner No.1 was appointed as Tracer on regular basis vide order dated 27.12.1973. Petitioner No.2 joined with RID Division, Ambala and petitioner No.3 was appointed in January, 1974. Rest of the petitioners were appointed on Stipendiary basis as Tracers and regularized vide order dated 13.08.1974. Vide order dated 22.10.1980 (Annexure P-2), petitioner No.1 was promoted to the post of Assistant Draftsman. Petitioner Nos.3 to 6 were promoted vide order dated 12.01.1982, petitioner No.2 was promoted on 11.12.1980 and petitioner Nos.7 and 8 qualified the departmental test for

the post of Assistant Draftsman after attaining the experience of more than five years. Vide notification dated 13.01.1983, the Government of Haryana notified the service rules known as Haryana Public Works Department (Public Health Branch) Draftsman and Tracer (Group 'C') Service Rules, 1983 and prescribed the qualification for various posts. Rule 9 of the Service Rules, 1983 provides the process of recruitment as well as promotion from the post of Tracer to Circle Head Draftsman. The said Rule is reproduced as under:-

“9. (I) Recruitment to the Service shall be made- Method of recruitment.

- (a) in the case of Circle Head Draftsman-
 - (i) by promotion from amongst the Divisional Head Draftsman; Or
 - (ii) by transfer or deputation of an official already in the service of any State Government OR the Government of India;
- (b) in the case of Divisional Head Draftsman-
 - (i) by promotion from amongst the Assistant Draftsman; or
 - (ii) by transfer or deputation of an official already in the service of any State Government or the Government of India;
- (c) in the case of Assistant Draftsman-
 - (i) 66% by direct appointment; or
 - (ii) by transfer Or deputation of an official already in the service of any State Government or the Government of India; and
 - (iii)
 - (a) 17% by promotion from amongst tracers who possess qualification prescribed for direct recruitment to the posts of Assistant Draftsman;
 - (b) 17% by promotion from amongst Tracers who have qualified departmental test conducted by the Engineer-in-Chief for the post of Assistant Draftsman; and
 - (d) in the Case of Tracers,-
 - (i) by direct appointment; or
 - (ii) by transfer or deputation of an official already in the service of any State Government or the Government of India.
- (2) Unless otherwise provided when any vacancy occurs or is about to occurs, the appointing authority shall determine the manner in which the same shall be filled in.
- (3) All promotions shall be made on seniority-cum-fitness.”

The qualification for direct recruitment for the post of Tracer, Assistant Draftsman and further for promotion to the post of Divisional Head Draftsman and Circle Head Draftsman are provided in Appendix 'B' Rule 7 of Service Rules, 1983, which are as under:-

Sr. No.	Designation of Post	Academic Qualifications and experience, if any, for direct recruitment	Academic Qualifications and experience, if any, for appointment other than by direct recruitment.
1.	2.	3.	4.
1.	Circle Head Draftsman	...	(i) Diploma in Civil Engineering, or a certificate in Civil Draftsman from a recognized institution and (ii) Five years experience as Divisional Head Draftsman
2.	Divisional Head Draftsman	...	(i) Diploma in Civil Engineering, or a certificate in Civil Draftsman from a recognized institution and (ii) Five years experience as Assistant Draftsman.
3.	Circle Head Draftsman	(i) Diploma in Civil Engineering, or a certificate in Civil Draftsman from a recognized institution and (ii) Knowledge of Hindi upto Matric Standard.	(i) Tracers who possess qualifications prescribed for direct appointment to the post of Assistant Draftsman should have two years experience as Tracer. (ii) Tracers who have qualified in the Departmental Test for the post of Assistant Draftsman should have completed five years service as Tracers.

4.	Tracer	(i) Matric or its equivalent from a recognized board/university, and (ii) Knowledge of Hindi upto Matric Standard	(i) Matric or its equivalent from a recognized board/university,, and (ii) Ability to make neat tracing or original plans and efficiency in farro-type work.
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The petitioners were duly qualified for the post of Tracers at the time of appointment and thereafter, they have been promoted to the posts of Assistant Draftsman after five years experience as Tracers and passing of departmental test.

Grievance of the petitioners is that after coming into force the Service Rules, 1983, they have been ignored for further promotion to the post of Divisional Head Draftsman on the ground that they do not fulfill academic qualification of diploma in Civil Engineering or a certificate in Civil Draftsman from a recognized institution. They were having the second qualification of five years experience as Assistant Draftsman. Juniors to the petitioners have been promoted as Divisional Head Draftsman then Circle Head Draftsman way back in the year 2001 and onwards. They are seeking the benefit of relaxation, which has been extended by the department in the case of Head Draftsman for promotion to the post of Circle Head Draftsman vide letter dated 22.10.1997 (Annexure P-3). The petitioners made an application dated 24.06.2009 (Annexure P-4) for grant of the above said benefit as has been granted to Sh. O.P. Malhotra and Sh. Gopi Ram. The case of the petitioners has been recommended by the Engineer-in-Chief, Haryana, PWD-respondent No.2 to respondent No.1 vide letter dated 29.10.2009 (Annexure P-5). Thereafter, vide order dated 07.09.2010 (Annexure P-6), the claim of the petitioners has been rejected.

Upon notice, written statement on behalf of the respondents has been filed, wherein they have admitted appointments of the petitioners as Tracers and further their promotion as Assistant Draftsman. With regard to grant of relaxation to Sh. O.P. Malhotra and Sh. Gopi Ram, it has been submitted that they were promoted as Head Draftsman before enforcement of Service Rules, 1983. Since promotion to the post of Circle Head Draftsman could only be made from the cadre of Divisional Head Draftsman and Sh. O.P. Malhotra and Sh. Gopi Ram had already been promoted as Head Draftsman, therefore, they were granted necessary relaxation under Rule 17 of Service Rules, 1983. The relaxation was given to whole class or category of persons working as Divisional Head Draftsman prior to enforcement of Service Rules, 1983. The day when such relaxation was given, the petitioners were not working on the post of Divisional Head Draftsman, as they were Assistant Draftsman. Hence, they were not entitled for the relaxation. They cannot claim parity with Sh. O.P. Malhotra and Sh. Gopi Ram. Moreover, Sh. Gopi Ram was appointed as Tracer in the year 1974 and was promoted as Assistant Draftsman in the year 1978. He was Diploma holder in Mech. Branch. He along with petitioner No.3 made a representation seeking relaxation on the basis of relaxation accorded to Sh. O.P. Malhotra, Circle Head Draftsman vide Annexure P-4. The relaxation was granted to Sh. Gop Ram vide letter dated 08.01.1999 (Annexure R-2) for his promotion as Head Draftsman being certificate holder in Mechanical Branch, which was equivalent to the certificate in Civil Draftsmanship. Neither the petitioners were having qualification of Diploma in Civil Engineering/Certificate in Civil Draftsmanship nor Diploma in Mechanical Engineering/Certificate in Mechanical/Draftsmanship. They are simply

Tracer only and were promoted to the post of Assistant Draftsman before publication of the Service Rules, 1983. It has been further stated that one Hanumant Singh, Assistant Draftsman, had filed a Civil Suit No.156 of 1998 seeking the benefit of promotion at par with Sh. O.P. Malhotra and Sh. Gopi Ram, which was dismissed by the Court of learned Civil Judge (Junior Division), Bhiwani vide judgment dated 12.09.2003 (Annexure R-2). A representation dated 15.10.2008 (Annexure R-3) was made by Sh. K. Babu Singh, father of petitioner No.6, seeking relaxation in qualification for promotion. However, the Government (respondent No.1) vide memo dated 29.01.2009 (Annexure R-5) filed the matter after careful consideration. Thereafter, petitioner Nos.1, 4, 6 and 7 made a representation (Annexure P-4). But, the Government (respondent No.1) vide letter dated 07.09.2010 (Annexure P-6), refused to accord the relaxation as requested by the petitioners. It has been further stated that after dismissal of the civil suit filed by Hanumant Singh, vide judgment (Annexure R-2), he along with other petitioners filed CWP No.18028 of 2010 claiming relaxation at par with Sh.O.P. Malhotra. Vide order dated 12.09.2012 (Annexure R-6), the said petition was dismissed by this Court with costs of Rs.20,000/-. However, the petitioners were granted liberty to challenge the rejection orders passed by the respondents, if permissible under law.

Heard, counsel for the parties.

Promotion is not a condition of the service and if the petitioners are not eligible for promotion as per the Service Rules, 1983, they cannot claim mandamus for giving them relaxation. The respondent-department has clarified its stand that relaxation to Sh. O.P. Malhotra had been granted prior to enforcement of the Service Rules, 1983. Hence, by granting him relaxation, he was made eligible for the next promotional post of Circle

Head Draftsman. In the case of Sh. Gopi Ram, he was already having a Diploma in Mechanical Branch. Hence, he was granted relaxation for the post of Divisional Head Draftsman. When the aforesaid relaxations were granted to Sh. O.P. Malhotra and Sh. Gopi Ram, the petitioners were not working on the post of Divisional Head Draftsman, as they were Assistant Draftsmen. Moreover, they were not having the qualification for promotion to the posts of Divisional Head Draftsman. Even, the stagnation in their service career has been taken care by introducing ACP Rules, 2008. Hence, no case for quashing of the impugned order is made out.

Dismissed.

15.07.2016
ajp

(RITU BAHRI)
JUDGE