

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 8810 of 2011

Date of decision : February 02, 2016

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Om Parkash Chitra

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Keshav Gupta, AAG, Haryana.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

By way of the present writ petition, the petitioner is seeking directions to the respondents to refix the pension of the petitioner and to consider the claim of the petitioner for promotion as per Rules of 1943 with effect from due dates as Head Draftsman, Circle Head Draftsman and Sub Divisional Engineer and to award the culminating benefits along with interest @ 12% p.a.

The petitioner was appointed as Assistant Drafts Man (Civil) on 17.6.1977 and retired from service on 31.1.2008. At the time of his appointment, Punjab Public Works Department Building and Roads Branch Draftsman and Tracers Service (Recruitment and

Conditions of Service) Rules, 1943 (hereinafter referred to as 'the 1943 Rules') were applicable. As per Rule 8, the members who were appointed by way of direct appointment shall remain on probation for a period of two years. The petitioner being a direct appointee was to remain on probation for a period of two years. As per 1943 Rules, the petitioner was entitled for next promotion as Head Draftsman in the year 1979 after completion of period of two years as there were approximately 45 posts of Head Draftsman available at that time and only one Head Draftsman in the category of petitioner i.e SC, Sh. Totru Mal was working. The Department as per Instructions of the year 1976 (Annexure P-2) took a decision to promote Assistant Draftsman to the post of Head Draftsman with an experience of five years. The instructions (Annexure P-2) were contrary to the statutory Rules. Further as per the Instructions dated 9.2.1979, 20% posts will be filled up from scheduled Castes Category with respect to Class-III and Class-IV posts. Vide office order dated 30.4.1981, Sh. Om Parkash Verma, P.C Jain, Sanyogta Sharma, Smt. Vinod Bala, Sh. Suresh Chander, Hari Chand, Bal Krishan and Madho Dass Arora were promoted as Head Draftsman. Similarly vide office order dated 26.2.1982, Sh. Ramesh Chander, Sh. Kesar Dass and Sh. Moti Lal Gulati were promoted. The petitioner was not considered for promotion to the post of Head Draftsman as he did not had five years experience as Assistant Draftsman. The petitioner was promoted vide order dated 31.7.1982 (Annexure P-4) as Head Draftsman against the Rules of 1943 as per which he could have been

promoted way back in the year 1979.

In the year 1983, Haryana Public Works Department (Public Health Branch) Draftsman and Tracer Group 'C' Rules, 1983 were framed and Rule 18 dealing with the reservation aspect is as under:-

18.Nothing contained in these Rules shall affect reservation and other concessions required to be provided for Scheduled Casts and other Backward Classes in accordance with the orders issues by the State Government in this regard from time to time under Clause (4) of Article 16 of the Constitution of India.”

Under the 1983 Rules, the condition for promotion from the post of Assistant Draftsman to Head Draftsman was the experience of 5 years as Assistant Draftsman. The petitioner completed his probation period on the post of Head Draftsman on 2.7.1984 (Annexure P-5). The petitioner was reverted from the post of Head Draftsman to the post of Assistant Draftsman vide the office order dated 26.12.1984 (Annexure P-6) on the ground that since Khushal Chand belonging to General Category who was on deputation with Hafed, Hisar had come back from deputation and as such the petitioner was reverted being junior most. After the reversion, the petitioner made number of representations to the respondent-Department for considering his claim. The copy of the

comprehensive representation is Annexure P-8. Thereafter, vide order dated 26.3.1990 (Annexure P-9), the petitioner was again promoted as Head Draftsman after a gap of period of 11 years. Subsequently on 23.8.1995, the petitioner was promoted as Circle Head Draftsman (Annexure P-10). The petitioner completed his probation period vide the order dated 14.10.1996 and vide order dated 2.11.2004, the petitioner was confirmed as Circle Head Draftsman. The petitioner was thereafter assigned the current duty charge for the post of Sub Divisional Engineer vide office order dated 7.4.2000 (Annexure P-11). Thereafter, he was promoted as Sub Divisional Engineer vide office order dated 6.8.2002 (Annexure P-12) and finally he retired from service on 31.1.2008. Reference has been made to a case of one Sh. Hawa Singh Mehra who was given the benefit on 6.11.1993 w.e.f. 22.2.1972 vide order (Annexure P-13). The petitioner is claiming parity with the said employee. Hawa Singh Mehra was appointed in the year 1961 and was given promotion as Head Draftsman and Circle Head Draftsman after a gap of two years in the year 1964 and 1970 in Joint Punjab as per Rules of 1943. The petitioner having been appointed as Assistant Draftsman on 17.6.1977 when Rules of 1943 were applicable, should have been given promotion in the year 1979 and 1981. After inception of Rules of 1983, the petitioner has wrongly been deprived of the promotion. According to the petitioner, he has wrongly been reverted from the post of Head Draftsman to the post of Assistant Draftsman vide order dated 26.12.1984 (Annexure P-6) on the ground that since Kushal

Chand belonging to General Category who was on deputation with Hafed, Hisar had come back from deputation, he was reverted being junior most.

On notice, written statement has been filed by respondents no. 1 & 2 stating therein that the petitioner was appointed as Assistant Draftsman in the then PWD Public Health Branch now Public Health Engineering Department, Haryana on 17.6.1977. The Government of Punjab PWD B&R Branch notified the Punjab Public Works Department, Building & Roads Branch, Draftsmen and Tracers Service (Recruitment & conditions of Service) Rules 1943 on 20.9.1943 (Service Rules, 1943) (Annexure R-1). Para 6(b) (i & ii) of the Service Rules, 1943 provided the method of recruitment on the post of Head Draftsman Class-II by promotion among the Assistant Draftsman and in the Rules, no length of experience as Assistant Draftsman were prescribed. The Government of Punjab, PWD B&R/ Public Health Branches vide letter dated 4.8.1964 (Annexure R-2) approved the adoption of minimum experience for promotion to higher posts in the Punjab, PWD, Public Health Branch on the basis of policy followed in the PWD B&R Branch. As per letter dated 4.8.1964 (Annexure R-2), five years experience as Assistant Draftsman for promotion as Head Draftsman Grade-II and five years experience as Head Draftsman Grade-II for the promotion of Circle Head Draftsman Grade-I was prescribed. Govt. of Haryana vide notification dated 27.10.1976 (Annexure R-3) prescribed the same length of experience for

promotion as Head Draftsman, Grade-II and Circle Head Draftsman Grade-I. The petitioner was appointed as assistant Draftsman on 25.6.1977. He was put on two years probation period which was cleared after completion of two years. He possessed five years experience on 24.6.1982 for consideration for the promotion to the post of Head Draftsman Grade-II subject to availability of vacancies and fulfillment of other conditions such like annual confidential reports, integrity and position of disciplinary actions as per requirement of instructions issued by Government from time to time. Sh. Ram Chander, Assistant Draftsman and petitioner were promoted as Head Draftsmen Grade-II vide office order dated 31.7.1982 (Annexure P-4). In the year 1983, the Haryana Govt. notified Service Rules, 1983 called the Haryana PWD (Public Health Branch) Draftsman & Tracers (Group C) Service Rules, 1983. As per Appendix-B of these Rules, the following qualification and experience were prescribed for promotion as 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.*

On reversion of Sh. Khushal Chand, Head Draftsman from deputation to parent department, the petitioner being juniormost was reverted as Assistant Draftsman vide order dated 26.12.1984 (Annexure P-6) as there was no vacant post of Head Draftsman. The petitioner filed a civil suit on 5.1.1985 in the Court of Sub Judge-III Class, Sirsa. He withdrew his suit vide application dated 28.1.1985

(Annexure R-5). When new posts of Head Draftsman were sanctioned in the year 1990, the petitioner was promoted as Head Draftsman vide order dated 26.3.1990 (Annexure P-9). The petitioner was promoted as Circle Head Draftsman vide letter dated 23.8.1995 (Annexure P-10). It has been further clarified in the written statement that his appointment on current duty charge on the post of Sub Divisional Engineer was subject to final outcome of CWP No. 692 of 1994 and with the condition that he will not claim any seniority consequent to the order (Annexure P-11). Subsequently, he was appointed on ad hoc basis on 6.8.2002 (Annexure P-12) in the pay scale of Rs.8000-275-10500-EB-375-13500.

I have heard the counsel for the parties and carefully gone through the records of the case. The respondents in the written statement have specifically clarified that as per Rules of 1943 (Annexure R-1), no experience was prescribed for promotion to the post of Head Draftsman. However, subsequently the Govt. of Haryana vide notification dated 27.10.1976 (Annexure R-3) prescribed five years experience for promotion as Head Draftsman Grade-II and 5 years experience for promotion as Circle Head Draftsman Grade-I. Further his two seniors Raj Paul and Khushal Chand, Head Draftsman were sent on deputation to the Haryanan State Co-operative Supply and Marketing Federation Ltd. vide order dated 22.7.1982 (Annexure R-4) with the condition that they will retain their lien as Head Draftsman in Public Health Department as per service rules. Once Raj Paul and Khushal Chand were sent from

deputation department to parent department, the petitioner and Ram Chander who were promoted as Head Draftsman Grade-II vide order dated 31.7.1982 (Annexure P-4) had to be reverted back to the post of Assistant Draftsman being juniormost as there were no posts of Head Draftsman. Subsequently, on the availability of new sanctioned posts of Head Draftsman in the year 1990, the petitioner was promoted as Head Draftsman vide order dated 26.3.1990 (Annexure P-9) and thereafter promoted as Circle Head Draftsman vide order dated 23.8.1995 (Annexure P-10). Further he was given Current Duty Charge on the post of Sub Divisional Engineer by the office of respondent no.1 on 3.4.2000 in his own rank and pay scales subject to final outcome of the pending CWP No. 692 of 1994 and with the condition the petitioner will not claim any seniority consequent to the order (Annexure P-11). In pursuance to decision dated 8.5.2002 in CWP No. 397 of 2000, the petitioner was appointed on ad hoc basis on 6.8.2002 (Annexure P-12). Hence the claim of the petitioner that he had a right to be appointed as Head Draftsman Grade-II is liable to be rejected. The petitioner has no right to claim promotion to the post of Head Draftsman Grade-II before completing five years experience as Assistant Draftsman in view of the notification dated 27.10.1976 (Annexure R-3).

Having regard to the aforesaid, there is no merit in the writ petition and hence the same is dismissed.

February 02, 2016
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(**RITU BAHRI**)
JUDGE