

On 08.11.1995, the petitioner was appointed as a Pipe Bandman on ad hoc basis and that on 01.10.2003, his services were regularized. As per the applicable rules, which are the Haryana Home Guards and Civil Defence Headquarter and Field Cadre (Group-C) Service Rules, 1999 (hereinafter referred to as – the Rules), the next promotion from the post of Pipe Bandman is to the post of Pipe Band Naik. **Rule 9 (1) FIELD CADRE (XV)**, as also **Appendix-B (15)**, which are relevant, are as under :-

“RULE 9(1) FIELD CADRE :

(XV) in case of Pipe Bank Naik -

- (i) by promotion from amongst Pipe Bandman; or***
- (ii) by transfer or deputation of an official already in the service of any State Government or the Government of India ;***

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Appendix-B

<i>Sr. No.</i>	<i>Designation of posts</i>	<i>Academic qualifications and experience if any, for direct recruitment</i>	<i>Academic qualifications and experience, if any, for appointment other than by direct recruitment</i>
<i>15.</i>	<i>Pipe Band Naik</i>		<i>By promotion -</i>

- (i) *Matric with Hindi;*
 - (ii) *Five years
experience as
Pipe band man*
- By transfer or
deputation -***
- (i) *Two years
experience as
Pipe Band Naik*
 - (ii) *Matric with Hindi”*

A perusal of the afore-quoted Rules and the Appendix make it clear that for promotion as Pipe Band Naik, a matriculate Pipe Bandman with five years' experience is eligible.

The record shows that as on 09.12.2014, the petitioner was eligible for promotion as Pipe Band Naik and that for such promotion, his name was recommended by the Commandant General Home Guards and Director Civil Defence, Haryana. However, instead of him, respondents no. 5 and 6, who were non-matriculantes and thus not eligible, by grant of relaxation, were promoted.

Once, as per the applicable Rules, the petitioner was eligible and had also been recommended, he should have been, in the first instance, considered for further promotion, rather than considering the cases of respondents no. 5 and 6, who were ineligible, by giving them relaxation.

Even otherwise, a perusal of the record shows that respondents no. 5 and 6

were given relaxation on the strength of an order dated 01.03.2007 (Annexure R-2), which could have not been made the basis for the grant of relaxation to them and their consequent promotion for the reason that order dated 01.03.2007 pertained to grant of relaxation for promotion to the post of Pipe Band Hawaldar/Band Master and not Pipe Band Naik i.e. to the post, to which respondents no. 5 and 6 were promoted and to which the petitioner seeks promotion. A perusal of the order dated 01.03.2007 further shows that this order was for the grant of relaxation qua particular posts, which were required to be filled up in the year 2007. This relaxation could have not been granted till thy kingdom come. At the time of promotion of respondents no. 5 and 6 on 09.12.2014, there was no specific order granting them relaxation for their promotion.

Still further, as per Rule 17 of the Rules, whenever relaxation is to be granted, the same has to be granted while recording reasons and that too, for a class or category of persons. No reasons are forthcoming why respondents no. 5 and 6 were given relaxation. Respondents no. 5 and 6 also do not form a class or category of persons and are individual cases.

Thus, both respondents no. 5 and 6 could have not been promoted as Pipe Band Naik in preference to the petitioner. However, the Court is informed that respondent no. 5 has retired and respondent no. 6 has been further promoted. In these circumstances, I consider it just and proper, at this stage, not to pass any adverse order qua them, especially when relief

can be granted to the petitioner without passing any adverse order against respondent no. 5 and 6.

In view of the aforesaid discussion, the present petition is allowed with a direction to respondent no. 2 to consider the case of the petitioner for promotion as Pipe Bank Naik w.e.f. 09.12.2014 with all consequential benefits. The needful be done within two months from the date of receipt of a certified copy of this order.

(DEEPAK SIBAL)
JUDGE

February 04, 2016
monika