

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

CWP No.3715 of 2014

Date of decision: 29.02.2016

Lalit Kumar Malhotra

...Petitioner

versus

Haryana Power Utilities and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vivek Salathia, Advocate,
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate,
for respondent Nos.1 to 4.

RITU BAHRI, J.

The petitioner, by way of present petition, is seeking to quash the order dated 12.06.2012 (Annexure P-1) passed by respondent No.4, refusing to grant deemed date of promotion to the petitioner w.e.f. 17.11.1983.

The petitioner was appointed as Lower Division Clerk (Head Office Cadre) in terms of Punjab Public Works Department (Electricity Branch) Provincial Service Class-III (Subordinate Posts) Rules, 1952 (for short '1952 Rules') and after completion of two years, he was confirmed on 10.11.1976. On 5/6.01.1977, after passing four departmental examinations conducted by the Chief Accounts Officer, he became eligible for promotion to the post of Upper Division Clerk. Vide order dated 25.10.1979, he was promoted as Upper Division Clerk (Head Office Cadre). He joined duties on the said post on 02.11.1979. After completing one year's probation period successfully, he was confirmed on 01.11.1980. Thereafter, the petitioner was

promoted after a gap of 15 years to the post of Assistant (Head Office Cadre) on 27.08.1996.

The grievance of the petitioner is that he was entitled to grant of deemed date of promotion w.e.f. 17.11.1983 when his junior i.e. respondent No.5-Birkha Singh Malik was appointed as Assistant. Said Birkha Singh Malik was appointed as UDC through direct recruitment on 20.02.1975. He qualified the departmental examination in June, 1983, whereas the petitioner had qualified this examination on 06.01.1977. As per Rules 7 and 9 of 1952 Rules, seniority between the promotee Upper Division Clerks and the directly recruited Upper Division Clerks will be fixed in view of the date of passing of the departmental examination. The petitioner had passed the departmental examination in January, 1977 i.e. more than 6 years prior to respondent No.5. Hence, he had a right to be promoted as Assistant w.e.f. 17.11.1983. The petitioner has retired from service on attaining the age of superannuation on 30.09.2004.

On bifurcation of Haryana State Electricity Board into four companies on 14.08.1988 and in compliance of the order dated 10.09.1992 passed by this Court in CWP No.9342 of 1988, a revised seniority list of UDCs (HO) was allocated to the Dakshin Haryana Bijli Vitran Nigam (DHBVN) beyond November, 1974 upto 31.12.1979 vide letter dated 02.09.2003 (Annexure P-3). The petitioner, thereafter, served a legal notice dated 04.10.2004 (Annexure P-4) upon the respondents seeking parity in determination of seniority viz a viz respondent No.5 and grant him the deemed date of promotion w.e.f. 17.11.1983 with all consequential benefits. To the said notice, respondents gave their reply dated 06.12.2004 (Annexure P-5). Thereafter, the petitioner filed Civil Suit No.596 of 2007 for

declaration to the effect that he be given deemed promotion as Assistant w.e.f. 17.11.1983. This suit was dismissed vide judgment and decree dated 15.05.2009 (Annexure P-9). Thereafter, he filed Civil Appeal No.15 of 2009 before the Appellate Court, which was dismissed on 15.01.2011. This Court in **Dharam Pal Singh and others Vs. DHBVN and others**, CWP No.8637 of 2004 (decided on 15.09.2010), directed the respondents to recast the seniority list after affording an opportunity to all concerned within a period of six months. Thereafter, the respondents circulated a revised seniority list of UDCs (HO) vide memo dated 15.02.2011 (Annexure P-12), wherein the name of the petitioner figured at serial No.74 and that of respondent No.5 at serial No.105. Against the name of petitioner, deemed date of promotion was mentioned as 17.11.1983. After getting information under the Right to Information Act, 2005 (RTI), the petitioner submitted a mercy petition (Annexure P-15) to respondent No.3 seeking recasting of the seniority list by providing the deemed date of promotion as Assistant w.e.f. 17.11.1983.

In their written statements, the respondents are admitting that in CWP No.2587 of 2012 filed by the petitioner and others, an order dated 17.02.2014 was passed. The respondents are not disputing that in compliance of the order dated 10.09.1992 passed by this Court in CWP No.9342 of 1988, a revised seniority list of UDCs (HO) was allocated DHBVNL was issued on 02.09.2003 (Annexure P-3). This list was beyond November, 1974 to 31.12.1979. In the subsequent revised list circulated vide memo dated 15.02.2011 (Annexure P-12), name of the petitioner figured at serial No.74 and that of respondent No.5-Birkha Singh Malik at serial No.105.

It is not in dispute that in CWP No.8637 of 2004 (decided on

15.09.2010), a direction was given to the respondents to recast the seniority list after affording an opportunity to all concerned within six months. Pursuant to the said order, a notice dated 04.01.2011 (Annexure P-11) was issued to the petitioner. After hearing the petitioner, revised list was published on 15.02.2011 (Annexure P-12), the petitioner is listed at serial No.74 and respondent No.5 is listed at serial No.105. Against the name of the petitioner, 'deemed date of promotion' was mentioned as 17.11.1983. In spite of issuing the revised seniority list (Annexure P-12), the petitioner has not been given any benefit with respect to the same. The only ground for denying the benefit is that the civil suit filed by the petitioner has been dismissed by the trial Court on 15.05.2009 and appeal against the said judgment, has been dismissed by the Appellate Court on 15.01.2011 (Annexure P-16). This cannot be a ground to deny the benefit to petitioner after giving him notice pursuant to the order dated 15.09.2010 passed by this Court in CWP No.8637 of 2004. In compliance of the said order, the petitioner was given a notice and thereafter, the revised seniority list has been prepared vide memo dated 15.02.2011 (Annexure P-12).

In view of the above, this petition is allowed and a direction is given to the respondents to grant benefit to the petitioner by giving him the deemed date of promotion as Assistant w.e.f. 17.11.1983 along with all consequential benefits.

29.02.2016
ajp

(RITU BAHRI)
JUDGE