

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4225 of 2014

Date of Decision: 11.07.2016

Om Parkash

... Petitioner

Versus

Uttar Haryana Bijli Vitran
Nigam and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.N. Lohan, Advocate,
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. The admitted position is that in the cadre of Meter Mechanics the petitioner was senior to the 3rd respondent. The petitioner entered service in 1974 on work-charge basis as a Lab Attendant while the 3rd respondent was appointed in 1977 on the same post. The record maintains that there was a declaration of surplus in the wing in which the petitioner worked and a decision was taken by the Corporation to retain his services, not as Meter Mechanic but as an Assistant Lineman. He did not lose his livelihood. The petitioner was promoted as a Lineman in 2010 with deemed date w.e.f. August 31, 2007. In consideration of cases for promotion to the post of Junior Engineer the petitioner was ignored while the 3rd respondent was

promoted as Junior Engineer and in this manner, the latter stole a march over his erstwhile senior. There appear to be no rules of service to bring clarity on the subject since the orders produced by the Corporation in its written statement also suggests this position where qualifications etc. have been laid down by way of “adjustments” and therefore it cannot be said hard and fast that there is any extant rule of service supporting the promotion of the 3rd respondent as a Junior Engineer to claim preferential right to promotion over and above his erstwhile senior at Level-1. Besides, the matter does not appear to be *res integra* as the issue stands considered and concluded by the ruling of this Court in CWP No.570 of 2009 titled *Balbir Singh v. State of Haryana and others*, where a similar stand was taken by the respondent-Corporation and rejected by the Court vide order dated July 07, 2010, the operative part of which reads as follows:-

“(2). Upon notice of motion, the official respondents have filed their counter-affidavit with the solitary plea that promotions to the post of Laboratory Assistant have been made on the basis of seniority of Meter Mechanics whereas the petitioner is not working in M&P Circle and is posted as ALM in (OP) Sub-Division Naguran.

(3). On the other hand, the petitioner has placed on record the seniority list of Meter Mechanics (Annexure P-1) in which he is placed at Serial No.13 and which clearly depicts that he was promoted as work-charged Meter Mechanic w.e.f. 06.02.1979. The junior, namely, Harbans Singh who has now been promoted is placed at Serial No.26 in the said seniority list.

(4). The stand taken by the respondents, thus, appears to be factually incorrect. The writ petition is accordingly allowed and the respondents are directed to consider the petitioner for promotion as Laboratory Assistant w.e.f. 16.11.2006 when his juniors were promoted. In case the petitioner is found suitable, it is directed that he shall be

promoted from the due date with all consequential service benefits.

(5). The needful shall be done within a period of three months from the date of receipt of a certified copy of this order.”

2. In respectful agreement with the view propounded by Brother Surya Kant, J., I allow this petition and direct the respondent-Corporation to promote the petitioner with effect from the date the junior was promoted firstly as a Lab Assistant and then as Junior Engineer, if he is found otherwise eligible and his service records and confidential rolls support the promotion. Let the consideration take place within two months from the date of receipt of certified copy of this order in which process the petitioner will be associated since he is a retired person and not routinely available in his former office. The retrospective promotion would bring with it notionally the consequential benefits both pecuniary and non-pecuniary including re-fixation of pay and pension. However, the actual arrears of money will be restricted to three years prior to the filing of the previous writ petition bearing CWP No.19500 of 2013 disposed of on September 04, 2013 by an ex parte order directing representation to be considered and decided on merits which led to illegal rejection and the adverse order.
3. Accordingly, the petition is allowed and the impugned order is set aside.

(RAJIV NARAIN RAINA)
JUDGE

11.07.2016
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