

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 27122 of 2016

Date of decision: 23.12.2016

Naresh Kumar

... Petitioner

Versus

State of Haryana & ors.

... Respondents

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

Present: Mr. SN Yadav, Advocate,
for the petitioners.

RAJIV NARAIN RAINA, J.(Oral)

On Level I (Clerk) the petitioner was senior to reserved category candidate-respondent No.4. 4th respondent was promoted on reserve roster point to Level II on 25.11.1998 as Accountant and on 21.6.2010 as Superintendent (Class II). The petitioner was promoted as an Accountant on 27.10.2008 and had reached at Level II when the 4th respondent was promoted to Level III. Applying law in Ajit Singh Januja-II & ors. v. State of Punjab & ors., AIR 1999 SC 3471, the General category candidates will catch up with the reserved category candidates for promotion to the higher post above Superintendent by applying the principle of catch up. There can be no doubt that for further promotion from Level I, the petitioner is senior to the 4th respondent.

The grievance which has arisen is that the reserved category candidate-4th respondent was promoted as Superintendent (Class II) in 2010 while the General category candidates were promoted to the rank of Accountants. The petitioner admits that there are 9 General Category candidate above him in seniority, who are not the petitioners. The prayer in

this case is for arrears of salary from 1998 when 4th respondent was promoted to Level II on reserve roster point. This claim is liable to be rejected because since at best relief can only be made to flow notionally from the date the junior was promoted. This is a special case where 4th respondent has been promoted by operation of the rule of reservation which is a fundamental right under Article 16(4) of the Constitution to which no one can have a complaint. Neither can second promotion of the 4th respondent to Level III be challenged because that is also on the basis of reserve roster point and if it is not on the reserve roster point, being a Class II post, then the promotion would have come by operation of the instructions of the Haryana Government of 1980 explaining how in Haryana reservation from Class III and IV posts promotions are made against vacancies arising out of retirement, promotion, dismissal and death. In Class I and II, there is no reservation in Haryana. All that the petitioner's claim is for further promotion from the post of Superintendent since the petitioner should be restored his seniority. To that extent, the law is in his favour. But the prayer in the writ for promotion to the post of Superintendent because the 4th respondent has been promoted in 2010 is not tenable since there are 10 General Category candidates above the petitioner whose rights have to be considered first. In any case, no person junior to the petitioner in the General Category has been promoted as Superintendent. Therefore, this petition is premature and is dismissed as such.

23.12.2016
monika

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No