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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3287 of 2015

Date of decision: May 04, 2016

Union Territory Chandigarh and others

.....Petitioners

Versus

Gulzar Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Sanjeev Sharma, Senior Advocate with
Mr. Vikram Vir Sharda, Advocate
for the petitioners.

Mr. Dinesh Kumar, Advocate
for respondent No.1.

None for respondent No.3.

1. Whether Reporters of Local papers 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?

SURYA KANT, J. (Oral)

The controversy in this case pertains to fixation of *inter se* seniority amongst differently abled persons for the purpose of their promotion against such posts, which are identified as suitable for them in deference to the mandate contained in Section 33 of the Persons With Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('1995 Act' for short).

The first respondent joined the Transport Department of U.T., Chandigarh initially as a helper in the year 1982 and was promoted as Electrician on 12.03.2003. He

unfortunately suffered the disability while in service and consequently, disability certificate was issued to him on 01.04.2010.

The first respondent filed Original Application before the Central Administrative Tribunal, Chandigarh Bench questioning the promotion of respondent No.3 (Satnam Singh) to the post of Head Electrician, on the ground that the first respondent being a differently abled person is entitled to be promoted within 3% reservation in promotion quota. The Tribunal allowed his claim to the extent that a direction has been issued to the petitioner-Administration to identify the posts against which differently abled persons can be promoted keeping in view the legislative mandate of the 1995 Act and thereafter, prepare a roster for promotion to the post of Head Electrician within a period of three months.

The petitioner-Administration appears to have understood the directions issued by the Tribunal contrary to the office memorandum of Government of India dated 10.06.2009, the relevant part whereof reads as under:-

“The undersigned is directed to say that various Ministries/Departments have been seeking clarification whether a person acquires disability after entering into Govt. Service shall get the benefit of reservation in services as provided in this Department's OM No.36035/2004-Estt. (Res.) dated 29.12.2005.

It is hereby clarified that the OM dated 29.12.2005 does not make any distinction between persons acquiring disability before or after entering

into service. An employee who acquires disability after entering into service will be entitled to get the benefit of reservation as a person with disability as provided in the instructions contained in the above referred OM from the date he produces valid certificate of disability."

We have heard learned counsel for the parties and gone through the record.

It may be seen from Para 2 of the circular issued by the Government of India that even if a person acquires disability after entering into service, such employee is entitled to get the benefit of reservation as a person with disability "from the date he produces valid certificate of disability."

The last phrase of Para 2 of the Government of India circular, in our considered view, does not mean that the seniority of the persons with disability is required to be determined on the basis of the dates of disability. The seniority shall have to be determined in accordance with the rules/instructions or following the settled principle, namely, the continuous length of service on a post. The last line of Para 2 of the circular issued by the Government of India simply says that on producing the valid certificate of disability, a person with disability is entitled to jump the queue for his consideration for promotion against the post identified as suitable for appointment of persons with disability.

The direction issued by the Tribunal regarding preparation of roster is also with a view to facilitate the authorities to identify the posts which, are suitable for being

manned by the persons with disability. It is for the authorities to identify such posts keeping in view the nature of duties and responsibilities attached to such posts. After identifying the suitable posts, the roster point for the purpose of giving effect to 3% reservation in 1995 Act can be formulated and an employee with disability as per his seniority in the cadre, then can be considered for promotion.

Learned Senior Counsel for the Administration submits that a clarification has been sought from the Government of India in this regard as the formulation of roster and/or identification exercise is likely to have impact on all India basis.

In this view of the matter, we direct the Government of India to issue the necessary clarification keeping in view the observations made hereinabove within three months. The needful as regard to the claim of the first respondent shall be done within a period of two months after the clarification is received.

Disposed of.

[SURYA KANT]
JUDGE

[A.B. CHAUDHARI]
JUDGE

May 04, 2016
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