

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 7342 of 2014

Date of decision : February 16, 2016

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Ram Kumar Bhadu and others

.....Petitioners

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vivek Khatri, Advocate for the petitioners.

Mr. Pardeep Singh Poonia, Advocate for respondents no.
1 to 4.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The petitioners have filed the present writ petition seeking a writ of certiorari for quashing the order dated 23.10.2013 (Annexure P-13) passed by respondents whereby the claim of the petitioners for stepping up of their pay at par with Azad Singh junior reserved category employee on the post of Head Draftsman and Circle Head Draftsman as well as for fixing up their pay notionally from the date he was promoted to the post of Head Draftsman and

Circle Head Draftsman has been declined.

Petitioners- Ram Kumar Bhadu, Rajbir Singh, Chand Ram and Zile Singh were appointed and joined the post of Junior Draftsman in the office of respondent on dated 27.1.1977, 16.12.1973, 25.9.1976 and 15.1.1977 respectively. They were promoted on the post of draftsman on dated 18.9.1979, 27.9.1979, 28.9.1979 and 25.9.1979 respectively. On 27.11.2006 (Annexure P-1), the Financial Commissioner and Principal Secretary to Government of Haryana, Finance Department issued certain guidelines and instructions in regard to stepping up of pay and fixation of pay of general category employees at par with their junior reserved category employees. Thereafter, Chief Secretary to Government of Haryana also issued instructions vide letter dated 13.11.2007 (Annexure P-2) as per the view taken by Hon'ble the Supreme Court of India in **Ajit Singh Janjua II and others vs. State of Punjab and others** decided on 16.9.1999. Guidelines and Instructions with regard to the stepping up of pay of senior general category employees at par with their junior counterparts reserved category employees were issued vide office order dated 5.3.2009 (Annexure P-3) by the Chief Secretary, Haryana. Thereafter, the petitioners were further promoted on the post of Head Draftsman on dated 28.3.2002, 21.3.2002, 18.3.2002 and 9.4.2002 and one Azad Singh who is very much junior to the petitioners was promoted on the post of Head Draftsman very earlier to the petitioners and thus he is getting more pay in comparison to the petitioners. The name of

the petitioners was at Sr. 56, 55, 46 and 59, whereas the name of Azad Singh who is a reserved category employee was at Sr. No.68 in the seniority list. On 23.1.2009, the petitioners filed representation for grant of benefit of stepping up of pay at par with their junior reserved category employee in view of the notification issued by the State Government.

Counsel for the petitioner has argued that the petitioners are seeking the benefit of stepping up of pay with Azad Singh as this issue has been settled by the High Court in its judgment titled 'Charan Dass vs. State of Haryana and others' decided on 18.11.2008 (Annexure P-4) and in LPA No.1259 of 2011 titled, 'Haryana Vidyut Parsaran Nigam Limited and others vs. Satya Pal Nagpal and another' (Annexure P-7) and in CWP No.19865 of 2010 titled 'Roshan Lal vs. Dakshin Haryana Bijli Vitran Nigam Limited and others' decided on 19.12.2011 (Annexure P-8). He has further referred to a judgment passed by this Court in CWP No. 17280 of 2011 titled, 'Prem Kumar Verma and others vs. State of Haryana' decided on 7.8.2012 (Annexure P-9) where the State Govt. vide Instructions dated 16.3.2006 had stated that general category employees who catch up with junior reserved category employees on 15.3.2006 can be entitled for the same and otherwise not. These instructions have been set aside vide judgment dated 7.8.2012 (Annexure P-9). Thereafter in the case of 'Vijay Kumar Minhas and others vs. Kurukshetra University, Kurukshetra and others' in CWP No.11389 of 2012 (Annexure P-10) and LPA No.1352 of 2012 titled,

`Devender Sachdeva and others vs. Kurukshetra University, Kurukshetra and others, decided on 10.10.2012 (Annexure P-11), a consistent view has been taken that the senior general category employee is entitled to step up of his pay at par with his junior reserved category employee.

Counsel for respondents, Mr. Punia has argued that in pursuance with the orders passed by this Court in CWP No.24006 of 2012 decided on 11.7.2013, the case of the petitioners had been considered and the benefit of stepping up of pay was allowed to the petitioners along with deemed date of promotion w.e.f 19.3.1979 as Draftsman at par with their junior counterpart of reserved category employee Sh. Azad Singh, CHD (Retd.) as they have caught him at the post of Draftsman only. The petitioners never caught up their junior counterpart of reserved category Sh. Azad Singh, CHD (Retd.) except on the post of Draftsman. In the written statement filed on behalf of the respondents, the service particulars of the petitioners and their junior counterpart of reserved category employees have been given in the form of a table. As per that table, the petitioners have not caught their junior counterpart of reserved category Sh. Azad Singh, CHD (Retd.) except on the post of Draftsman in their service tenure. Hence, the petitioners are not entitled for the benefit of stepping up of their pay at par with their junior counterpart of reserved category Sh. Azad Singh, CHD (Retd.) except on the post of Draftsman. He has referred to a judgment passed by the Co-ordinate Bench of this Court in the case

of *Madan Lal vs. Uttari Haryana Bijli Vitran Nigam Ltd. and others (CWP No. 1894 of 2014)* decided on *March 13, 2015*, wherein it has been observed that once a general category candidate is not able to catch up with the reserved category candidate on the next higher post, the principle of catching up would have no applicability.

The issue of stepping up of pay has been decided in Charan Dass's case (Supra) vide order dated 18.11.2008 (Annexure P-4) and by a recent judgment of this Court in Kiran Bala and another vs. State of Haryana and another decided on 28.4.2011 (Annexure P-5). A letters Patent Appeal filed against the judgment of Kiran Bala's case (supra) has also been dismissed on 26.9.2011 by this Court. Moreover, a similar view has been taken in LPA No. 1259 of 2011 titled, 'Haryana Vidyut Parsaran Nigam Limited and others vs. Satya Pal Nagpal and another' decided on 29.8.2011 and in the case of V.B Nanda and others vs. U.H.B.V.N and others (CWP No.20351 of 2008) decided on 14.7.2010.

After hearing counsel for the parties, the main question for consideration in the present case would be as to how the petitioners are claiming stepping up with their reserved category counterpart Azad Singh who had been given promotion or who was otherwise senior to them as Draftsman. The name of the petitioners stand in Sr. 56, 55, 46 and 59, whereas the name of Azad Singh who is a reserved category employee was at Sr. No.68 in the seniority list. The service particulars of the petitioners and their junior

counterpart of reserved category are reproduced as under:

<i>Sr. No</i>	<i>Name and DOB of Sh.</i>	<i>Sty. No.</i>	<i>DOJ as JDM</i>	<i>DOJ as DM</i>	<i>DOJ as HDM</i>	<i>DOJ as CHD</i>	<i>DOR</i>
1	Azad Singh (SC) DOB: 01.08.1947	68	17/01/77	19/3/79	13/09/82	15/01/95	31.07.05
2	Chand Ram (DOB: 09.07.54)	46	25/09/76	28/9/79	18/3/02	05/11/08	31.07.12
3	Rajbir Singh (DOB: 04.04.55)	55	16/12/73	27/9/79	09/04/02	07/10/10	30.04.13
4	Ram Kumar (DOB : 07.04.55)	56	27/01/77	28/9/79	28/3/02	07/07/11	30.4.13
5	Zile Singh (DOB: 14.8.55)	59	15/1/77	25/9/70	09/04/02	07/07/11	31.08.13

From the chart, it is clear that Azad Singh was promoted as Draftsman on 19.3.1979, whereas the petitioners i.e Chand Ram was promoted as Draftsman on 28.9.1979, Rajbir Singh on 27.9.1979, Ram Kumar on 28.9.1979 and Zile Singh on 25.9.1970. As the petitioners were senior to Azad Singh, hence on the post of Draftsman, the respondents have rightly given stepping up of pay to the petitioners at par with Azad Singh. Now the question to be decided in the present petition is whether the petitioners are entitled to stepping up of pay as Head Draftsman? From the Chart, it is clear that the petitioners were promoted as Head Draftsman in the year 2002 whereas Azad Singh was promoted as Head Draftsman on 13.9.1982. By the time, the petitioners got their promotion, he had already been promoted as Circle Head Draftsman on 15.1.1995. Hence on the date of promotion of the petitioners as Head Draftsman, they could not catch up with Azad Singh as he had already stood promoted as Circle Head Draftsman on 15.1.1995. Taking this fact into consideration, the subsequent claim of the

petitioner for stepping up of pay at par with Azad Singh as Head Draftsman and subsequently as Circle Head Draftsman has been rejected.

A similar controversy as in the present case has been considered by a Co-ordinate Bench of this Court in the case of ***Madan Lal vs. Uttari Haryana Bijli Vitran Nigam Ltd. and others (CWP No. 1894 of 2014 along with connected cases)*** decided on **13.3.2015**. The dispute in that case was that the petitioners were seeking stepping up of pay as Circle Head Draftsmen. As per the information given, the petitioner in that case was promoted as Head Draftsman on 3.9.1985 and his reserved category junior had already been promoted as Circle Head Draftsman on 15.10.1982 and, therefore, the petitioner could not catch up with his reserved category junior when they were promoted as Head Draftsman. After going through the judgment of this Court in ***Rajbir Singh vs. State of Haryana and others*** CWP No. 25512 of 2012 decided on 14.11.2014, this Court had come to the conclusion that there was not even a single case, where any Court has permitted a person to catch up with a junior who climbed up two steps ahead of him. The writ petition was dismissed by observing that due to the relief granted to the petitioners in the case of ***V.B Nanda and others***, the respondent-State cannot take a different view for the present petitioner as it would amount to discrimination. A claim for discrimination cannot be raised against an illegal benefit. Once a general category candidate is not able to catch up with the reserved

category candidate on the next higher post, the principle of catching up would have not applicability. No LPA has been filed against the judgment in ***Madan Lal's case (Supra)***. The judgment in ***Madan Lal's case (Supra)*** is squarely applicable to the facts of the present case. By the time, the petitioner got the promotion to the post of Head Draftsman, Azad Singh who was a reserved category candidate was promoted as Circle Head Draftsman on 15.1.1995. Hence the petitioners could not catch up with Azad Singh when they were promoted as Head Draftsman in the year 2002 as Azad Singh already stood promoted on 15.1.1995 as is clear from the table reproduced above.

Having regard to the aforesaid and in view of the judgment in ***Madan Lal's case (Supra)***, present writ petition is dismissed.

February 16, 2016
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(RITU BAHRI)
JUDGE