

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

201

**CWP No.14996 of 1994
Date of Decision : 20.01.2017**

Rameshwar Khalsa and others Petitioners

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Anil Rathee, Advocate
for the petitioners.

Ms. Shruti Jain Goyal, A.A.G., Haryana
for respondents No.1 and 2.

None for respondent No.3.

AJAY TEWARI, J. (Oral)

By this petition the petitioners have challenged the grant of seniority to the respondent No.3 vide orders dated 20.09.1994 and 22.09.1994.

On the last date the following was passed:-

“Learned counsel for respondent No.3 prays for another opportunity to file written statement.

In the interest of justice, respondent No.3 is granted

another opportunity to file written statement.

May do so at least a week before the next date of hearing with an advance copy to the counsel opposite.

List on 20.01.2017.”

Neither any written statement has been filed nor anybody has appeared on behalf of respondent No.3. In the circumstances, I proceed with the matter.

Brief facts of the case are that the respondent No.3 was selected as Clerk in the year 1977 and was appointed to the Canal Lining Circle. Some persons from that batch were directly appointed to the Head Office. It is not disputed that both the cadres are separate cadres. The position continued for 10 long years. In 1987 the Head Office circulated a letter to all the field officers stating that there were certain vacancies in the Head Office and option be received from the interested candidates. The respondent No.3 opted to come to the Head Office. Thereafter he was appointed by transfer to the Head Office. Condition No.9 of the Appointment Letter (Annexure P-5) is as under:-

“9. You will be the junior-most in the cadre of clerks in Irrigation Branch, Head Office and your seniority will be counted from the date of joining in Irrigation Branch, Head Office.”

The respondent No.3 accepted that without demur. Five

years later he filed a representation claiming that since he had obtained higher position than those of his batch-mates who had been directly appointed in the Head-Office he should be declared senior to them. The representation was accepted vide order dated 22.12.1992. Thereafter the petitioners alongwith 28 other clerks submitted a detailed representation and the respondent No.1 vide order dated 12.03.1993 requested the department to not take action till further orders. Subsequently after considering the record the representation of the respondent No.3 was rejected. Against that rejection the respondent No.3 filed a writ petition bearing CWP No.13407 of 1993 which was disposed of by this Court with a direction to the respondents to consider his representation and pass appropriate order thereon. Thereafter the respondent No.1 decided and accepted the representation of respondent No.3 on the ground that in the select list prepared by the Haryana Staff Selection Commission he had been placed higher than those persons who had been appointed in the Head Office. By the instant petition that order has been challenged.

Learned counsel for the petitioners has argued that the respondent No.3 accepted without demur that he had been appointed to the Canal Lining Circle while some of the selected candidates had been appointed in the Head Office. Ten years later he exercised the option to

come to the Head Office and at that stage also accepted with open eyes

the condition No.9 quoted above. Moreover, as per the learned counsel it is well-known principle of law that a person who seeks appointment by transfer from one cadre to other has to relinquish any claim for seniority.

Learned Assistant Advocate General has argued that what weighed with the competent authority is the fact that before initially appointing respondent No.3 to the Canal Lining Circle his option was not taken. To my mind that fact was hardly germane. The determinant would be the fact that it was inter-cadre appointment by transfer and specific condition No.9 was incorporated in the order appointing him. He could not later on fall back on the principle that he had been placed senior in the select list.

Consequently, the petition is allowed and the impugned orders are set aside.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

January 20, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No