

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

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**CWP-12227-2012 (O&M)
Date of decision:24.11.2017**

Jitender Pal Singh and another

....Petitioners

Versus

Union of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr.I.D.Singla, Advocate for the petitioners.

Mr. Anil Chawla, Advocate for the respondent-UOI.

Mr. Arun Jindal, Advocate for respondents No. 6 and 7.

P.B. BAJANTHRI, J. (ORAL)

CM-16913-CWP-2017

This is an application for placing on record affidavit in compliance with the order dated 08.11.2017. Heard. Allowed, as prayed for subject to all just exceptions.

Affidavit is taken on record.

With the consent of the parties, main matter heard.

Main case

In the present writ petition, petitioners have challenged the validity of promotion order dated 22.02.2012 and waiting list dated

21.02.2012 (Annexures P7 and P8) and further quashing the order dated 02.05.2012 (Annexure P9) regarding rejection of their representation. Petitioners and private respondents were appointed as Sub-Inspector (Junior Engineer) G.D. The respondents have made certain arrangement in respect of re-designation of various posts including Sub-Inspector as Assistant Engineer/Assistant Commandant. The petitioners are stated to have approached this court and this court was pleased to decide on 19.12.2002 vide Annexure P1 while directing the respondents to consider claim of the petitioners for promotion to the post of Assistant Engineer (Civil) under the relevant rules. In compliance to the directions of this court official respondents were proceeded to hold DPC on 19.11.2003 and assigned date of promotion as 06.11.1996 in the cadre of Assistant Civil Engineer/Assistant Commandant. Similarly some of the persons also approached various High Courts in the country and obtained orders and they were also promoted. Faced with these factual aspects the official respondents issued seniority list of Assistant Engineers/Commandant on 25.01.2006 in which petitioners No.1 and 2 have been placed at serial No. 10 and 11 respectively. Whereas respondents No.6,7 and 8 have been assigned 13,14 and 15. Thereafter, two more seniority lists were published on 01.01.2006 and 07.10.2008 in which also petitioners have been shown over and above the private respondents. Respondents No.6 to 8 failed to challenge the ranking assigned to petitioners and to them. Even though they were stated to be seniors to the petitioners. Official respondents published one more seniority list on 21.02.2012. While publishing they have altered

the ranking assigned to the petitioners and contesting respondents No. 6 to 8. In the seniority list dated 21.02.2012 ranking of the petitioners have been pushed down while bringing the respondents No.6 to 8 over and above the petitioners. Hence the present writ petition.

2. Learned counsel for the petitioners submitted that as long as seniority lists dated 19.11.2003, 01.01.2006 and 07.10.2008 in which the petitioners have been shown over and above the contesting respondents No. 6 to 8 are not questioned and it has attained finality. Abruptly altering the ranking assigned to the petitioners on 21.02.2012 is highly arbitrary and illegal. Moreover earlier seniority list was not disturbed. It was further submitted that in the absence of judicial order quasi judicial action of the respondents in fixing the seniority cannot be altered. Even such alteration is highly belated since 19.11.2003 to 20.02.2012 petitioners have been shown over and above the private respondents. Clerical errors if any could be rectified and not the ranking. Therefore, on the ground of delay in alteration of ranking also the impugned seniority list as well as promotion are liable to be set aside.

3. Per contra, learned counsel for the official respondents submitted that private respondents have entered into service prior to petitioners. Petitioners services have been lend to other than the general duty. Therefore, petitioners cannot claim seniority over and above the contesting respondents No.6 to 8. It was further submitted that even some of the persons who are similarly situated like petitioners including the contesting respondents obtained judicial order in respect of retrospective promotion.

Accordingly, DPC was held and retrospective promotions were given to them. Therefore, rightly seniority has been prepared while placing the petitioners below the contesting respondents with reference to service record. Hence there is no infirmity in the ranking assigned and order of the promotion with rider that subject to availability of vacancies.

4. Heard learned counsel for the parties.

5. Undisputed facts are that respondents have notified seniority list on 19.11.2003, 01.01.2006 and 07.10.2008. In all the 3 seniority lists, petitioners have been shown over and above the contesting respondents. As long as contesting respondents have not challenged the ranking assigned to them so also to the petitioners in the seniority list published on 19.11.2003, 01.01.2006 and 07.10.2008, the same cannot be altered suo moto by the official respondents on 21.02.2012 in the absence of judicial order. Moreover, the contesting respondents have failed to challenge the ranking assigned to them in the judicial form. Authority can alter seniority list belatedly only if any clerical errors as held by the Supreme Court in the case of ***State of U.P. and others veruss Arvind Kumar Srivastava and others*** reported in (2015) 1 SCC 347. Relevant extract of judgement reads as under:-

“22.2 However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court

earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

6. Therefore, seniority assigned to the petitioners and contesting respondents in the seniority list dated 21.02.2012 is hereby set aside. The concerned official respondent is hereby directed to re-assign the ranking to the petitioners and contesting respondents with reference to the earlier seniority lists within a period of 3 months from the date of receipt of this order. Consequently, promotion order dated 22.02.2012 issued in favour of the contesting respondents is also hereby set aside. Official respondents are hereby directed to consider petitioners name for promotion to the post of Deputy Commandant (Works) from 20.02.2012 with all consequential benefits including arrears of pay. If they are otherwise eligible necessary order be passed within a period of 3 months from today.

7. With these observations, petition stands allowed.

24.11.2017

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No