

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3018-2009 (O&M)
Date of Decision:-15.12.2017.

Harinder Singh and others

.....Petitioners

Versus

National Fertilizers Limited and others

.....Respondents

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

Present: Mr. Puneet Gupta, Advocate for the petitioners.

Mr. Vipin Mahajan, Advocate for respondent Nos.1 and 2.

Mr. Vijay Lath, Advocate for respondent Nos.2 and 3.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioners have challenged the validity of orders dated 13.05.2008, 02.09.2008 and 04.12.2008 (Annexures P-2, P-6 and P-14, respectively).

Petitioners are in the cadre of Store Keeper in the material wing whereas respondent Nos.3 and 4 are also Store Keepers and they are in the mechanical and electrical wing, respectively. 4th respondent was shifted from electrical to material wing on 29.10.2007 while retaining lien in the electrical wing. The official respondents under the Office Manual which provides for diversification of employees from one discipline to another (from one wing to another), invoked Clause 1.16.6 of the Office Manual and shifted respondent No.3 on 13.05.2008 from mechanical wing to material wing. Similarly, 4th respondent was shifted from electrical wing to material

wing on 14.12.2008. In the meanwhile, on 2.09.2008, official respondents have notified the seniority list of Store Keeper of material wing wherein name of respondent No.3 has been reflected at Sr. No.3 whereas names of petitioner Nos.3 to 9 are reflected at Sr. No.4 to 10 and petitioner Nos.10 to 11 are in the feeder cadre of Store Keeper namely Senior Godown Keeper. Whereas 4th respondent's name was not included as he was not yet diversified from electrical wing to material wing. Petitioners filed their objections both for posting of respondent Nos.3 and 4 to material wing pointing out that their service conditions would be affected. Further objections were filed. Objections were not considered. Thus, petitioners are aggrieved by the shifting of respondent Nos.3 and 4 to the material wing from mechanical and electrical wing, respectively and ranking assigned to respondent No.3 in the seniority list of material wing dated 2.9.2008. Hence, the present petition.

Learned counsel for the petitioners submitted that in order to favour respondent Nos.3 and 4, they were brought from mechanical and electrical wing to material wing with the object that they would get accelerated promotion to the post of Executive Officer earlier than their parent wing. For the purpose of shifting of employees from one wing to another wing is governed by the Office Manual viz., clause 1.16.6 relating to diversification of employees from one discipline to another. The official respondents have not complied sub-clause (a) and (b) or clause 1.16.6 while considering respondent Nos.3 and 4 for their diversification from one discipline to another. In this regard, it is submitted that he relied on factual materials like shortage of members in mechanical division through excess in material division. Further he relied on documents like sanctioned strength

as on 31.05.2008 to the extent that material Store Keeper's sanctioned strength is 8 whereas working strength is 9. If respondent Nos.3 and 4 are accommodated in material wing, there would be further excess of strength in the Store Keeper post of material wing. It was further submitted that while recommending the name of respondent Nos.3 and 4 for the purpose of shifting from mechanical and electrical wing to that of material wing Chief Manager (P&A) has recommended vide communication dated 06.05.2008. In this regard, petitioners have obtained information under RTI Act, 2005 which is evident from the RTI information read with the Appellate Authority's order under the RTI Act which has specifically denied that there is no document which has been cited by the Head of the Department in respect of Chief Manager (P&A). Thus, it is evident that for extraneous reasons, the official respondents have passed the order of shifting respondent Nos.3 and 4 to the material wing from mechanical and electrical wing. It was further submitted that whenever a seniority list is prepared, it is bounden duty of the competent authority to issue tentative list and invite objections from the likely to be affected persons. Such a procedure has not been adopted while issuing the seniority list dated 2.09.2008 (Annexure P-6). It was also submitted that from time to time, petitioners were making objections for entry of respondent Nos.3 and 4 to the material wing. The official respondents have failed to give any cause either accepting or rejecting petitioner's objections. This conduct of the official respondents suffice to say that in order to favour respondent Nos.3 and 4, impugned decision has been taken to shift them from mechanical and electrical wing to that of material wing and thereafter respondent No.3 name has been incorporated whereby service conditions of some of the petitioners are

seriously affected. Therefore, impugned action of the official respondents are liable to be set aside.

Per contra learned counsel for the official respondents No.1 and 2 submitted that no doubt there is a reference relating to shortage of employees in the material wing by the Chief Manager (P&A), however, it is oral communication. Therefore, such a material is not available. It was further submitted that while shifting respondent Nos.3 and 4 from mechanical and electrical wing to that of material wing clause 1.16.6 (a) & (b) of the Office Manual has been complied with reference to material available read with Annexures P-5 and P-7. It was admitted by the official respondents that information furnished to the petitioners under RTI Act is contrary to material facts. Further strongly relied on clause 1.16.6 (a) & (b) have been complied. Therefore, there is no infirmity in shifting respondent Nos.3 and 4 to material wing from mechanical and electrical wing. Learned counsel for respondent Nos.1 and 2 further pointed out that respondent Nos.3 and 4 even though they were shifted from mechanical and electrical wing to material wing, they would carry the seniority in view of Clause (b) of 1.16.6. Therefore, question of giving opportunity to the petitioners before publication of seniority list and placing ranking over and above some of the petitioners do not arise.

Learned counsel for respondent Nos.3 and 4 submitted that shifting of their services from one wing to another wing is in accordance with Clause 1.16.6 of the Office Manual relating to diversification of employees from one discipline to another. Therefore, there is no infirmity. It was further submitted that in their respective wing like mechanical and electrical, their juniors have been promoted to the post of Executive Officer

during the pendency of this petition. Therefore, respondent Nos.3 and 4 neither in the material wing nor mechanical and electrical wing and they have not been benefited by promotion on either of the wings. The official respondents have ample powers to diversify employee from one wing to another. Therefore, there is no infirmity in their action.

Heard learned counsel for the parties.

The official respondents before passing the order dated 13.05.2008 by which the 3rd respondent has been shifted from mechanical to material wing similarly shifting of respondent No.4 from electrical wing to material wing on 2.9.2008 whether they have complied Clause 1.16.6 of the Manual or not. Clause 1.16.6 of the Manual reads as under:-

“1.16.6: Diversification of employees from one discipline to another:-

a) Request from individual employees for diversification from one post/discipline to another post/discipline will not be entertained as it is basically the prerogative of the Management to decide whether or not there is need to diversify an employee from one post/discipline to another in the interest of work.

b) The management, however, in view of operational/organizational and administrative consideration has an inherent right to utilize the services of any employee in any job/post, wherever, considered expedient. Accordingly, if the Management is of the view that a particular employee is suitable and capable of satisfactorily performing the duties of a post in another discipline, the Management may at its discretion straightway transfer the concerned employees on lateral transfer basis to such a post in that discipline in the interest of work. In such cases the individual transferred from his parent discipline/post to another

discipline/post on lateral basis shall carry the seniority eligibility of the post held by him in the parent discipline but in the matter of all future promotions, his career advancement will be only in the diversified discipline.”

No doubt reading of the aforesaid clause, official respondents/competent authority is empowered fully to diversification of an employee from one discipline to another discipline. Further authority is required to follow sub-clauses mentioned in the criteria. Perusal of Annexure P-2 dated 13.05.2008, it is evident that none of the clauses have been considered and explained in the memorandum. What has been stated is that “date of consideration with immediate effect.” Similarly in the case of 4th respondent shifting on 4.12.2008 date of consideration. In support of the memorandum dated 13.05.2008 and 14.12.2008, reasons have not been recorded as to how they are entitled for shifting from one wing to another wing read with the clause mentioned in 1.16.6 (a) and (b). Further admittedly, no reasons have been recorded as to how the official respondents have picked up respondent Nos.3 and 4 shifting them to material wing when number of seniors are already available in the respective wing of mechanical and electrical wing. Thus, discretionary power under clause 1.16.6 of the Manual has been exercised arbitrarily. That apart, no reasons have been recorded as to why other officials in the mechanical and electrical wing are not eligible for the purpose of shifting to material discipline. Moreover perusal of cadre strength as on 31.05.2008, sanctioned strength in the Store Keeper of material wing is 8 whereas, working strength is 9. There is already one person in excess to the sanctioned strength. These issues have not been taken into consideration

If respondent Nos.3 and 4 are accommodated in the Store Keeper - material wing, naturally service conditions of the petitioners who were in the material wing would be affected and their seniority has been affected in view of the seniority list dated 2.09.2008. Supreme Court in the case of **Ajit Singh-II Vs. State of Punjab** reported in **1999 (7) SCC 209** in para 22 held that right to seniority is a fundamental right. Para 22 reads as under:-

“22. [Article 14](#) and [Article 16\(1\)](#) are closely connected. They deal with individual rights of the person. [Article 14](#) demands that the "State shall not deny to any person equality before the law or the equal protection of the laws". [Article 16\(1\)](#) issues a positive command that "there shall be equality of opportunity for all citizens in the matters relating to employment or appointment to any office under the State". It has been held repeatedly by this Court that clause (1) of [Article 16](#) is a facet of [Article 14](#) and that it takes its roots from [Article 14](#). The said clause particularizes the generality in [Article 14](#) and identifies, in a constitutional sense "equality of opportunity" in matters of employment and appointment to any office under the State. The word 'employment' being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. [Article 16 \(1\)](#) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered"

for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right.

"Promotion" based on equal opportunity and 'seniority' attached to such promotion are facets of fundamental right under Article 16(1)."

Thus, if any right in the seniority list is affected, an opportunity should be given to the likely to be affected persons. The official respondents cannot take shelter under Clause (b) of 1.16.6 of the Office Manual so as to deny right to seniority to the petitioner in the material wing. It was further evident from the record that official respondents have misled the concerned officer to the extent that there is a noting of the Head of the Department to the extent that there is a shortage of persons in the Store-Keeper - material wing. To that extent there is no noting. Thus, perusal of the records it is evident that in order to favour respondent Nos.3 and 4, the official respondents have passed the memorandum while shifting them from mechanical and electrical wing to that of material wing as Store Keeper. Further assigning ranking in the seniority list of Store Keeper - material wing to respondent No.3 without seeking objections from the likely to be affected persons would be arbitrary and illegal. Hence, orders dated 13.05.2008, 02.09.2008 and 04.12.2008 (Annexures P-2, P-6 and P-14, respectively) are set aside.

Petition stands allowed.

Learned counsel for respondent Nos.3 and 4 submitted that names of respondent No.3 and 4 have not been considered for the purpose of promotion in the respective mechanical and electrical wing. The official respondents are permitted to consider their names for promotion to the post of Executive Officer from the date of juniors' promotion after following due procedure and in accordance with law.

(P.B. BAJANTHRI)
JUDGE

December 15, 2017.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.