

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

CWP No. 10843 of 2013 (O&M)
Date of decision: 9.3.2017

Kamlesh Kumar

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. RS Manhas, Advocate,
for the petitioner.

Mr. L. S. Virk, Additional Advocate General, Punjab.

Mr. H.R. Kapil, Advocate,
for respondents No. 6 and 7.

JAISHREE THAKUR, J.

1. The petitioner was appointed as Beldar with the respondent department on 26.10.2010 on compassionate ground. From the post of Beldar, the next promotional post for the petitioner is to Class III post i.e. Signaller. The case of the petitioner was recommended for promotion to the said post as one of the Signallers was retiring. However, respondent No.2, by impugned order dated 22.2.2013 promoted the private respondents by ignoring the case of the petitioner, who was eligible for promotion. Aggrieved the instant writ petition has been filed.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner was working on the post of Signaller and as per Rule 9 (1)

(b) (ii) of the Punjab Public Works (Irrigation Branch) Signaller State

Service Class III Rules, 1955, if no suitable person is available from amongst the temporary Signallers, by promotion from amongst the apprentice Signallers. It is contended that the petitioner had been deputed as a Apprentice/Trainee Signaller and once he had started working as Class III employee, he should have been considered against the two vacant posts. However, without considering his candidature, the private respondents have been promoted.

3. Per contra, learned counsel appearing on behalf of the respondent—State submits that the petitioner was appointed as Beldar, vide letter dated 19.10.2010. He had made an application for promoting him as a regular Signaller against vacant post, but the petitioner was put to learn the work of Trainee Signaller in addition to his work as Beldar, vide letter dated 8.10.2012. Even though the petitioner was sent to learn the work of Trainee Signaller, apart from his work as Beldar, he started marking his attendance as Trainee Signaller. On promotion of respondents No. 6 and 7 as regular Signallers, the petitioner was sent back to his post. It is also submitted that respondents No. 6 and 7 are much senior to the petitioner and have already worked as Trainee Signallers and they were promoted after considering their seniority, qualifications, eligibility etc. and, therefore, the petitioner has no right to claim the promotion to the post of Signaller.

4. I have heard learned counsel for the parties and have also perused the record of the case.

5. Admittedly, the petitioner is junior to respondents No. 6 and 7 who had joined services in the year 1996 and 1984 respectively and had already gained knowledge and experience of working as Training Signaller,

in addition to their work of Gauge Reader for more than four years, whereas the petitioner joined the services only in the year 2010 and was put to learn the work of Trainee Signaller with effect from 10.10.2012. It is categoric case of the respondents that the petitioner was not asked to work as Trainee Signaller on any independent post, but rather was allowed to learn the work of Signaller, in addition to his job work as Beldar. Once the persons (respondents No. 6 and 7) senior to the petitioner, having requisite qualification, experience, eligibility etc, have been promoted to the regular post of Signaller and there is no post available, there could be no infirmity in the order passed sending the petitioner back to discharge his duties as Beldar. Moreover, this fact has not been controverted by the petitioner by filing replication thereto. If the post has been filled up by regular appointment by persons who are senior to the petitioner, the petitioner will have no right to claim promotion on the post of Signaller.

6. For the reasons afore-stated, the writ petition is dismissed being devoid of any merit.

9.3.2017
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No