

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11573 of 2013(O&M)
Date of Decision:-24.07.2017.

Govind Singh Bisht

.....Petitioner

Versus

Union of India and others

.....Respondents

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

Present: Mr. H.S. Saini, Advocate for the petitioner.

Ms. Manisha Garg, Advocate for the respondents-UIO.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has questioned the impugned seniority list dated 04.02.2013 vide Annexure P-2 in which petitioner's name has been shown wrongly in the cadre of Constable (Auto Electrician) and further transferring him from SHQ Abohar to SHQ Jammu against the post of Constable vide order dated 08.05.2013 (Annexure P-6).

Petitioner is stated to have been appointed as Constable on 14.07.1988. He has earned promotion to the cadre of Head Constable on 3.5.2007. While working as a Head Constable in the year 2009, respondents have created post of Head Constable (Auto Electrician). Respondents have sought for option from the eligible Head Constables to absorb them in the Auto Electric Wing. Petitioner exercised his option. Accordingly, his services have been taken into consideration in the cadre of Head Constable

(Auto Electrician) from 29.6.2009 (Annexure P-1). In this background,

whether petitioner's name can be shown as Constable in the Auto Electric Wing or not. Further whether petitioner can be treated as a Constable and posting him at SHQ Jammu on 08.05.2013 (Annexure P-6), is correct or not?

Learned counsel for the petitioner submitted that when petitioner was already promoted on 03.05.2007 in the General Wing and further as per the option sought by respondents to work as Head Constable in Auto Electric with effect from 29.6.2009, question of treating him as a Constable and to transfer him to SHQ Jammu vide order dated 08.05.2013 is contrary to the promotion order dated 03.05.2007 read with absorption/posting order dated 29.6.2009 as a Head Constable (Auto Electrician).

Per contra learned counsel for the respondents submitted that there is error in showing the petitioner in the cadre of Constable in Auto Electrical Wing. It was further submitted that in view of Annexure R-1 dated 22.3.2012, petitioner has not made out a case so as to interfere with the order of transfer.

Heard learned counsel for the parties.

Crux of the matter in the present petition is whether petitioner's name can be shown in the cadre of Constable (Auto Electrician) or not w.e.f. 14.7.1988. Creation of Auto Electrician Wing itself is in the year 2009, when the petitioner has entered Constable cadre on 14.7.1988, therefore, question of incorporating petitioner's name as a Constable (Auto Electrician) do not arise. Hence, petitioner's ranking in the Constable (General) is to be maintained w.e.f. 14.7.1988, the date on which he entered

order dated 8.5.2013 as a Constable is highly arbitrary and illegal for the reasons that as long as order of promotion dated 03.05.2007 in the General Head Constable cadre and absorption in Auto Electric Wing and permitting him to discharge of the duties of the post of Head Constable under Auto Electric Wing w.e.f. 29.6.2009 are not withdrawn, modified or cancelled, petitioner cannot be treated as a Constable. Therefore, the ranking assigned in the Constable (Auto Electrician) dated 04.02.2013 Annexure P-2 is set aside and further transferring the petitioner from SHQ Abohar to SHQ Jammu against the post of Constable vide order dated 08.05.2013 (Annexure P-6) is also set aside. While holding petitioner as Constable as on 8.5.2013 amounts to reduction in rank and it is without compliance to principle of natural justice. Consequently, the respondents are directed to maintain petitioner's ranking and seniority in the cadre of Head Constable – Auto Electric Wing w.e.f. 29.06.2009 onwards and further his service condition are to be set right if anything is altered as on today. Further during pendency of this petition if petitioner is entitled to any other service benefits be granted to him.

With the above observations, petition stands allowed with cost of ₹ 15,000/-. Cost has been ordered for the reasons that on the face of the record impugned action are highly arbitrary and illegal.

(P.B. BAJANTHRI)
JUDGE

July 24, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.