

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

**CWP No.12906 of 2014 (O&M)
Date of Decision: July 24, 2017**

Kamaldeep Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Abhishek Arora, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

Mr. Sanjeev Sharma, Advocate
for respondent No.2.

Mr. Sunil Bindlish, Advocate
for respondent No.3.

Mr. D.S. Patwalia, Sr. Advocate with
Mr. Gaurav Rana, Advocate
for respondents No.4 & 5.

TEJINDER SINGH DHINDSA, J. (Oral)

The Punjab State Agricultural Marketing Board on 13.12.2012, issued a Final Seniority List, Part-4 of the Sub Divisional Officers (Civil) from Sr. Nos.49 to 90 (Annexure P-18). Anoop Singh, Jaspal Singh and Ravinder Kumar SDOs (Civil)(Private respondents herein) assailed the Final Seniority List dated 13.12.2012 before the Revisional Authority i.e. the Secretary, Department of Agriculture, State of Punjab.

2. The instant writ petition is directed against the order dated 28.04.2014, passed by the Secretary, Agriculture Department, State of Punjab (respondent No.1) at Annexure P-27 and in terms of which, the revision petitions preferred by the private respondents, have been accepted and the Board has been directed to issue appropriate orders granting seniority to them as SDO (Civil) w.e.f. 24.05.2000 along with all consequential benefits.

3. Having heard counsel for the parties, this Court is of the considered view that the validity of the impugned order dated 28.04.2014 (Annexure P-27) need not be gone into on merits and a case for remand to the Revisional Authority is made out.

4. In the writ petition, it has been specifically averred that in the Final Seniority List dated 13.12.2012 (Annexure P-18), the petitioner was shown at Sr. No.67 and the name of respondent No.3 was reflected at Sr. No.71. Respondents No.4 & 5 did not even figure in the seniority list as they were beyond Sr. No.90 and the final seniority list was only up to Sr. No.90. Such factual assertion has not been rebutted in the written statements filed on behalf of the private respondents. Petitioner herein was not impleaded as a party respondent in the revision petitions that had been preferred by the private respondents before the Revisional Authority assailing the seniority list dated 13.12.2012. It has also gone un-controverted that the petitioner moved an application dated 18.03.2014 (Annexure P-25) before the Revisional Authority taking an objection that he has not been impleaded as a party in the appeal/revision preferred by

the private respondents against the Final Seniority List dated 13.12.2012. In such application, contentions on merits were also raised and it was prayed that decision may be taken in the matter after considering his contentions. Vide office memo dated 26.03.2014, comments of the respondent-Board on the application submitted by the petitioner were sought. In response, the respondent-Board on 17.04.2014 (Annexure P-26) furnished para wise comments and which were in the following terms:-

*“Superintendent,
Government of Punjab, Department of Agricultural,
(Mandi Branch),
Chandigarh.*

Subject: Regarding Seniority of Sub Divisional Officers in Punjab Mandi Board.

Reference:- Your office memo No.3/15/2014-M-1/1703 dated 26.03.14.

The para wise comments to the application of Sh. Kamaldeep Singh, SDO (Civil) received along with the letter under reference are as under:-

- 1. This is correct as per records.*
- 2. This is correct that Sh. Kamaldeep Singh joined Punjab Mandi Board on deputation as SDO (Civil) on 01.08.2007, thereafter, vide office order No.C-176(2009) dated 24.06.2009 he was absorbed in Punjab Mandi Board subject to the condition that he will not claim seniority at any stage above the regular SDOs working till the date of issue of absorption order.*
- 3. It has already been clarified in Para No.2 that on the date of absorption he would be fixed below the seniority of regular SDOs.*
- 4. This is correct that Sh. Kamaldeep Singh*

accepted the orders of absorption and submitted his joining report as SDO. Promotion as Executive Engineer would be done as per seniority.

5. *This is correct that considering his experience he was given the additional charge of Executive Engineer (Quality Control) without extending any financial benefits.*

6. *This is correct that this office has released the seniority list of SDO (Civil) on 13.12.2012. This Seniority list was released after addressing all the objections on tentative seniority list and decision taken vide office order No.C-723 (2012) dated 13.12.2012. This was issued from the date of promotion of regular SDO(C) as per provision of rules. In this seniority list Sh. Kamaldeep Singh is fixed at Sr. No.67.*

7. *Board had finalized the seniority list of SDO(C) vide letter No. 6/19531-589 dated 13.12.2012. A Revision Petition was filed with Secretary, Punjab Government, Department of Agricultural against this seniority list by Sh. Jaspal Singh Pawar, Sh. Ravinder Kumar Mahajan and Sh. Anoop Singh. The hearing of this revision petition was held on 10.01.2014. The Government had reserved the decision against this revision petition which has not been conveyed till date.*

8. *This is correct that Sh. Kamaldeep Singh sacrificed the seniority of his service prior to being absorbed in Punjab Mandi Board and that he was fixed at the bottom of the seniority of regular SDOs i.e. he was given seniority from his date of absorption in Punjab Mandi Board.*

9. *Regarding this, the decision is to be taken by the Government.*

In addition to the above it is also clarified that:

1. *Sh. Kamaldeep Singh was absorbed vide office*

order No.C-176(2009) dated 24.06.2009 and was given seniority below the regularly promoted SDOs working in the Board but Sh. Jaspal Singh Pawar, Sh. Ravinder Kumar Mahajan and Sh. Anoop Singh, who were promoted on Adhoc basis as stop gap arrangement against the post of direct recruitment vide office order No.C-743(2000) dated 24.05.2000, have claimed the seniority through a revision petition filed with the Government from the date of their promotion (Adhoc), whereas, these promotions were made purely based on temporary working arrangement subject to the condition that they are liable to be reverted after regular arrangement is made. The candidates included in the above office order No.C-176(2009) dated 10.01.2014 have been promoted on regular basis against the vacant posts of promotional quota as per rules and recommendations of D.P.C. from the below mentioned dates:-

- 1. Sh. Satnam Singh Chahal on dated 10.08.2005*
- 2. Sh. Anoop Singh on dated 11.02.2010*
- 3. Sh. Daljit Singh Gill on dated 19.11.2011*
- 4. Sh. Jaspal Singh Pawar on dated 15.03.2012*
- 5. Sh. Ravinder Kumar on dated 15.03.2012*

All the above officials have submitted their joining reports against the above promotions without filing any complaints, because they were well aware that these promotions have been made by the Department as per provisions of rules and their earlier promotions were only Adhoc. Promotion to these posts could not be done without conducting the DPC as these fall in Class—II Category.

2. In the cadre of SDO(Civil) there are 58 posts, out of which as per rules 45% posts are for direct recruitment category i.e. 26 posts. Out of these posts Sh. Kamaldeep Singh is working against one post.

Balance 25 posts of direct recruitment were sanctioned for the first time by the Government vide order dated 23.12.2011 for filling them through promotions. According to this sanction given in the year 2011, all the earlier sanctions with the condition of reversion were purely stop gap arrangements and were only Adhoc.

3. Vide Mandi Board office Order No. 6/19531-589 dated 13.12.2012 the seniority of SDOs was finalized. According to this seniority list from the date of Adhoc promotion of Sh. Jaspal Singh Pawar, Sh. Ravinder Kumar Mahajan and Sh. Anoop Singh on 24.05.2000 to the date of regular promotion of Sh. Anoop Singh on 11.02.2010, 15 officials were promoted as SDO (Civil) from different cadres, however, no objections were raised by anybody. If the petitioners are given seniority from their date of their Adhoc promotions then the seniority of all the officials promoted against the promotional quota between 24.05.2000 to 11.02.2010 will be affected, out of which two officials have already been given further promotion as Executive Engineer.

Based on the above the seniority fixed by the Board vide officer order No. 6/19531-589 dated 13.12.2012 is correct as per rules. This may please be up held.

*Sd/-
Chief Engineer(Q.C.)
for: Secretary”*

5. Perusal of the comments dated 17.04.2014 reproduced hereinabove, would clearly show that apart from taking a stand on merits, the Board had in unequivocal terms stated that if the petitioners (private respondents herein) are given seniority from the

date of their *ad hoc* promotions then the seniority of all the officials promoted against the promotional quota between 24.05.2000 to 11.02.2010 will be effected and out of which, two officials have already been given further promotion as Executive Engineer.

6. The contents of the document placed on record at Annexure P-26 i.e. the comments furnished by the Board to the Revisional Authority are not disputed by counsel representing the respondents herein.

7. Strangely, the comments furnished by the Board as also the objection as regards non-joinder of proper and necessary parties have not been dealt with by the Revisional Authority in the impugned order dated 28.04.2014 (Annexure P-27).

8. It is by now well settled that seniority is a condition of service. The final seniority list dated 13.12.2012 (Annexure P-18) could not have been un-settled by the Revisional Authority without calling upon and hearing objections from employees who could have been adversely effected including the petitioner herein.

9. The impugned order has been passed in violation of the principles of natural justice and as such cannot sustain on such short ground alone. Held accordingly.

10. For the reasons recorded above, writ petition is allowed. Impugned order dated 28.04.2014 (Annexure P-27) is set aside. The matter is remanded back to the Revisional Authority i.e. the Secretary, Government of Punjab, Department of Agriculture, to pass orders afresh after affording to all parties an opportunity of hearing. Such

exercise of re-consideration and passing of orders afresh be finalized within a period of three months from the date of receipt of a certified copy of this order.

11. In the meanwhile, it is directed that *status quo* shall be maintained till the passing of the order afresh as directed and for a period of three weeks thereafter.

12. It is clarified that this Court while quashing the impugned order dated 28.04.2014 (Annexure P-27) and having remanded the matter to the Revisional Authority, has not expressed any opinion on the merits of the case.

13. Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

24.07.2017
anju rani

Whether speaking/reasoned : **Yes/No**
Whether reportable : **Yes/No**