

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

CWP No.1574 of 2014

Date of Decision:25.10.2017

Salvinder Singh

... Petitioner

Vs.

Union of India and another

... Respondents

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

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

Mr. Prateek Mahajan, Advocate for respondent No.1.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has prayed for the following relief:

“(a) issue a writ in the nature of certiorari quashing the order dated 23.10.2013 (Annexure P-3) qua petitioner alone, whereby the petitioner is being transferred to general duty (GD) cadre and also reckoning a seniority from the date of such joining.

(b) issue a further writ of mandamus directing the respondents to allow the petitioner to continue to work as Constable Fitter of Generator Operator in BSF Engineering Setup.

(c) issue a further writ of mandamus directing the respondents to consider the case of the petitioner for the promotional/absorption as Head Constable Fitter from the date junior to him had been absorbed/promoted.”

Petitioner was selected and appointed to the post of Constable (Fitter) in Engineering setup of the BSF and he was posted in Punjab Action Plan (PAP on 11.6.1993. In the year 1995, in order to streamline the department, respondents abolished certain posts. While abolishing certain posts and against posts which were retained were accommodated by juniors to the petitioner whereby petitioner's services have been affected in

transferring him to Constable (GD). On the last occasion on 25.09.2017, concerned respondent was directed to file an affidavit relating to the factual aspect to the extent whether any junior to the petitioner has been retained in the technical posts or not. To that effect an affidavit has been filed by one Shri Sanjeev Bhanot, Deputy Inspector General/PSO, BSF, Punjab Frontier, Jalandhar (Punjab). In para-4, he has admitted that one Shri Rajender Prasad Singh-Constable (Fitter) who was junior to the petitioner was retained in technical wing as on 10.01.1995 based on the recommendations of DIG Sector HQrs where petitioner and Shri Rajender Parsad were working thereby they have admitted that junior to the petitioner has been retained in technical wing while ignoring petitioner.

Learned counsel for the respondents submitted that there is a delay and laches on the part of the petitioner in seeking relief on par with his junior Shri Rajender Parsad since his retention in the technical wing would be as on 10.01.1995. He further submitted that petitioner has undergone various tests and courses in respect of constable (GD). Therefore, he is not entitled for his retention in Constable (Fitter)-Technical Wing.

Heard learned counsel for the parties.

Perusal of the records, it is evident that petitioner was in the cadre of Constable (Fitter). Due to abolition of certain posts in the Constable (Fitter), petitioner was directed to be accommodated as a General Duty Constable. Petitioner was posted as Constable (General Duty) so also on technical side. It is further evident that in view of the seniority list published in the year 2013, petitioner's name is reflected in the technical wing. In view of these facts and circumstances and the fact that petitioner's

junior one Shri Rajender Parsad has been retained as a Constable (Fitter) as on 10.01.1995 with reference to abolition of certain posts only based on the recommendations of DIG Sector Hqrs. Such retention of junior to petitioner was not notified. Consequently, petitioner was not in a position to know. It is a clear case of discrimination and violative of Articles 14 and 16 of the Constitution in respect of implementation of abolition of various posts so also to adjustment of Constable (Fitter). In other words, retaining a junior and re-drafting services of seniors to a different wing is a clear case of discrimination. Therefore, order dated 23.10.2013 (Annexure P-3) is set aside insofar as petitioner is concerned. Respondents are hereby directed to extent all benefits which have been extended to Sh. Rajender Parsad Singh Constable (Fitter). Concerned respondent is hereby directed to extend service benefits so also monetary benefits, if any, within a period of four months from today.

Petition stands allowed accordingly.

25.10.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**