

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14660 of 2016

Date of Decision:-17.04.2017.

Dharmbir Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. Naveen Daryal, Advocate for the petitioner.

Mr. Apoorv Garg, DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has questioned the validity of order dated 16.4.2014 whereby he has been retired from service on medical ground that he was medically unfit to discharge the duties of the post of Driver of Heavy Vehicle. Consequently, he was posted as a Chowkidar. Thus, the petitioner is questioning such arrangement by the official respondents.

2.) The petitioner was appointed as a Driver on 18.12.1995. While discharging the duties of the post of Driver, he had suffered from paralytic attack. Consequently, he was subjected to Medical Board wherein it was found that he was medically unfit to discharge the duties of the post of Driver. Thus, he was posted as a Chowkidar which is under challenge.

3.) Learned counsel for the petitioner submitted that Driver post is higher than the Chowkidar post. Consequently, the petitioner cannot be

posted as a Chowkidar merely on the ground that he was medically unfit to hold the post of Driver. Such arrangement is nothing but reverting the petitioner from the higher post to that of a lower post. It was further contended that under the Disabilities Act, the competent authority is required to adjust an employee who is suffering from disability during the course of employment that such an employee shall be posted or adjusted against any of the equivalent post or he may be kept on supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Therefore, posting the petitioner as Chowkidar which is lower than the Driver post amounts to reduction in rank and pay of the petitioner has been reduced drastically. Hence, the impugned decision of the respondents is arbitrary and illegal.

4.) On the other hand, learned counsel for the State respondents relied on sub-section 2 of Section 47 of the Disabilities Act to contend that the Government is empowered to issue notification exempting certain posts. Thus, Driver is one of the post exempted under the Notification. Consequently, the petitioner has been posted as a Chowkidar. Therefore, there is no infirmity in the order dated 16.4.2014.

5.) Heard learned counsel for the parties.

6.) Crux of the matter is whether an employee who is disabled during the course of employment can be accommodated against equivalent post or not? Further whether such an employee can be posted to the lower post without there being pay protection? Undisputedly, the petitioner joined service as a Driver in the year 1995. During the course of the employment in the year 2014, he suffered paralytic attack. He was subjected to Medical

Thus, he has been posted as a Chowkidar. The official respondents have not made out any effort to adjust the petitioner against any equivalent post to that of Driver. Straightway the petitioner has been posted as Chowkidar which is the lower post. Even assuming that if there are no equivalent posts to that of driver, the official respondents should have protected the pay of the petitioner in the post of Driver which is higher than the post of Chowkidar. Therefore, the impugned decision to post the petitioner as Chowkidar which is lower than the Driver post amounts to reduction in rank. Consequently, order dated 16.4.2014 (Annexure P-1) is liable to be set aside. The respondents are directed to accommodate the petitioner against any equivalent post to that of Driver. If such posts are not available, the official respondents are directed to protect the pay of the petitioner as on the date of holding that the petitioner is medically unfit to hold the post of Driver and posting him as a Chowkidar. The above exercise shall be completed by the respondents within a period of three months. Further the official respondents are directed to give pay protection in the post of Driver until he attained the age of superannuation and retired from service. If any arrears of pay is required to be paid, the same shall be paid by the official respondents within a period of 3 months from today.

7.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

April 17, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.