

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19480 of 2013.

Date of Decision:-11.07.2017.

Anjani Kumar Sharma

.....Petitioner

Versus

Union of India and others

.....Respondents

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

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

Mr. J.S. Lalli, Senior Panel Counsel
for respondent Nos.1 and 2-UOI.

P.B. BAJANTHRI, J. (Oral)

Petitioner has assailed the orders dated 14.9.2011 and 4.3.2013 (Annexure P-4 and P-12) and further sought for a direction to the respondents to consider his name for the post of Second-in-Command (Electrical) from the date of 3rd respondent's promotion.

The post of Second-in-Command (Electrical) was in existence w.e.f. 31.10.2007 vide recruitment rules, 2007 issued by the Ministry of Home Affairs called the "Border Security Force (Engineering Officers) Recruitment (Amendment) Rules, 2007". Perusal of sub-rule 2 of Rule 1 of amended Rules, 2007 clarify that these rules came into force on the date of their publication in the Official Gazette. The respondents while considering petitioner's name for promotion/appointment to the post of Second-in-Command (Electrical) considered the experience in the cadre of Deputy Commandant etc. as on 01.01.2007 stating that petitioner is ineligible due to short of 8 months and 4 days residency period as prior to his induction in

engineering cadre. The experience is required to be taken into consideration for the purpose of eligibility to the post of Second-in-Command (Electrical) as stated in the Rules of Recruitment as on 31.10.2007 or as and when Amendment Rules, 2007 was published in the Official Gazette and not w.e.f. 01.01.2007 as the reason assigned for rejection of petitioner's name for appointing him to the post of Second-in-Command (Electrical) or promoting him to the post of Second-in-Command (Electrical) is contrary to the Amendment Rules, 2007 issued on 31.10.2007. Perusal of the Amendment Rules, 2007, it is evident that it is a prospective and not retrospective so as to contend that as on 01.01.2007, petitioner do not fulfill the requisite experience qualification. In view of the aforesaid facts and circumstances, impugned order dated 4.3.2013 Annexure P-12 is hereby set aside. The concerned respondent is hereby directed to re-consider the petitioner's name for appointment/promotion to the post of Second-in-Command (Electrical) from the date of 3rd respondent-Lalit Kumar Kain's promotion, viz., w.e.f. 14.9.2011. The petitioner is entitled for consequential benefits like service and monetary from the date the 3rd respondent was promoted. The official respondents are directed to extend all service benefits on par with the 3rd respondent including the next higher post if the petitioner is otherwise eligible. The above direction shall be complied within a period of 3 months from today.

Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

July 11, 2017.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.