

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16716-2015(O&M)

Date of Decision:-07.11.2017.

P.Ramakrishnan

.....Petitioner

Versus

Union of India and others

.....Respondents

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

Present: Sh. R.D. Bawa, Advocate for the petitioner.

Sh. Shivoy Dhir, Advocate for the respondents.

Major D.V.Rao, Senior Record Officer, in person.

P.B. BAJANTHRI, J. (Oral)

Pursuant to the order dated 25.09.2017 Major D.V. Rao, Senior Record Officer, Record Office (GREF) is present in Court to assist in the matter.

In the instant writ petition, petitioner has sought for a direction to the respondents to consider his name for promotion to the post of Charge Mechanic from the date of juniors' promotion in the year 2009. He has also sought quashing of the communication dated 16.01.2013 (Annexure P-11).

The petitioner as well as one Sh. C.V. Babu name amongst others names were considered for promotion to the post of Charge Mechanic with reference to DPC held in the month of October/November,

2007. Pursuant to the DPC both petitioner and one Sh. C.V. Babu amongst

others were promoted to the post of Charge Mechanic w.e.f. 27.06.2008. Petitioner's name is at Serial No. 23 whereas, Sh. C.V. Babu name is at Serial No.12. Petitioner as well as Sh. C.V. Babu have submitted their unwillingness in respect of acceptance of promotion to the post of Charge Mechanic on 11.10.2008 received by the respondents on 16.12.2008. Similarly, Sh. C.V. Babu submitted his unwillingness on 14.07.2008 received by the respondents on 27.11.2008 for promotion to the post of Charge Mechanic. Second DPC was held in the month of October & November 2008. In the second DPC, petitioner's name was overlooked on the score that petitioner has submitted his unwillingness for promotion to the post of Charge Mechanic with reference to the promotion order dated 27.06.2008 (Annexure P-4) on 11.10.2008 and it has been received by the respondents on 16.12.2008 that is much after second DPC. Therefore, petitioner's name has been overlooked for promotion to the post of Charge Mechanic in the second DPC held in the Month of October and November, 2008.

Learned counsel for the petitioner submitted that unwillingness for promotion to the post of Charge Mechanic was submitted on 11.10.2008 with reference to first DPC held in the month of October, 2007 read with the promotion order dated 27.06.2008 (Annexure P-4). Therefore, not considering petitioner's name in the second DPC and considering similarly situated person like Sh. C.V. Babu and promoting him to the post of Charge Mechanic and for the second time he is given his unwillingness to accept promotion. Thus, learned counsel for the petitioner submitted that the respondents' action in not considering petitioner's name for the second DPC

Mechanic on the 2nd occasion is highly arbitrary and illegal. Consequently, the communication dated 16.01.2013 (Annexure P-11) is liable to set aside.

Per contra, learned counsel for the respondents vehemently contended that even though the petitioner was promoted to the post of Charge Mechanic with reference to first DPC on 27.06.2008, he has given his unwillingness on dated 11-10-2008 which has been received by the respondents on 16.12.2008 that is much after holding of 2nd DPC in the month of October and November 2008. Therefore, rightly the respondents have taken a decision to overlook petitioner's name for second DPC as well as promotion to the post of Charge Mechanic. It was further submitted that petitioner's reasons for giving his unwillingness for promotion to the post of Charge Mechanic is that he has been selected for the 28th Indian Antarctica Expedition by the Border Roads Organization (for short 'BRO'). Therefore, as on the second date of DPC, he was on Antarctica expedition. In other words, he was not working in the respondents'-Department at that time, consequently, his name was not considered in 2nd DPC and he is not entitled to promotion to the post of Charge Mechanic.

Heard learned counsel for the parties.

Short question for consideration in the present writ petition is whether the petitioner's name is required to be considered for the second DPC and further is he entitled for promotion or not? Undisputed facts are that petitioner's name as well as Sh. C.V. Babu's name was considered amongst others for promotion to the post of Charge Mechanic with reference to Ist DPC held in the month of October, 2007. Consequently, promotion order was issued 27.06.2008. Both petitioner as well as Sh. C.V.

though, unwillingness of the petitioner dated 11.10.2008 reached the official respondents on 16.12.2008 and the second DPC was conducted in October and November, 2008. Overlooking the petitioner's name for second DPC by the official respondents may not be correct for the reasons that official respondent were aware of the fact that the petitioner has not accepted the order of promotion dated 27.6.2008. No action has been taken by the official respondents against the petitioner like relieving him and so also passing any order to the extent that petitioner failed to accept promotion order dated 27.6.2008. As per the circular or policy of the official respondents that if an employee foregoes promotion, his name is required to be considered in the next DPC. Undisputedly, petitioner has not accepted the promotion order dated 27.6.2008, consequently, his name should have been considered in the second DPC held in the month of October/November, 2008 for which petitioner's name is required to be considered having regard to the fact that he has not accepted the earlier promotion order dated 27.6.2008 read with policy. Even assuming that if he is not working in the respondents' office as on the date of DPC as well as on the date of promotion, his name is required to be considered on the score that his services were drafted to 28th Indian Antarctic Expedition by BRO for the period from 13.10.2008 to 6.12.2009. In other words, principle laid down by various Courts is that if an employee's services are drafted or he is sent on deputation, even in that event such employee's eligibility and other service conditions are required to be protected while considering eligibility. Therefore, even though petitioner was not working with the official respondents as on the date of second DPC held in the month of October/November, 2008 and on the date of promotion, even then, he is

entitled to consider his name for promotion to the post of Charge Mechanic. Accordingly, communication dated 16.01.2013 (Annexure P-11) is set aside. The respondents are hereby directed to re-consider the petitioner's name for promotion to the post of Charge Mechanic and hold DPC if the petitioner is otherwise eligible as on October/November, 2008. His name shall be considered for promotion to the post of Charge Mechanic from the date of promotion with reference to DPC held insofar as others are concerned in the month of October/November, 2008. The concerned respondents are hereby directed to conduct DPC and take further action. If petitioner is promoted from retrospective date, in that event he is entitled to arrears of pay; the same shall be calculated and disbursed. The above action shall be taken by the concerned respondents within a period of 4 months from today.

With the above observations, petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

November 07, 2017.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.