

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.26639 of 2013 (O&M)
Date of Decision:-20.04.2017.

Prithvi Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

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

Mr. Hitesh Pandit, Additional A.G. Haryana.

Mr. Deepak Sonak, Advocate for respondent Nos.4 to 6.

P.B. BAJANTHRI, J. (Oral)

CM No.5095-CWP-2017

CM for placing on record the affidavit of Anil Kumar Pahwa, Superintending Engineer, Public Health Engineering Circle, Kaithal – respondent No.3 is allowed subject to all just exceptions for the reasons stated in the application as well as affidavit.

CWP No.26639 of 2013

1.) In the instant writ petition, the petitioner has questioned the validity of order dated 28.11.2013 vide Annexure P-1 insofar as private respondents are concerned by which the private respondents have been promoted to the post of Water Pump Operator-II in Kaithal Circle.

2.) The petitioner is stated to have been appointed to the post of Class-IV on 1.1.1986 whereas, respondent Nos.4 to 6 were appointed on 1.7.1986, 23.8.1986 and 11.9.1986, respectively. Both the petitioners and private respondents services have been regularized w.e.f. 1.4.1993 in the Class-IV post. Superintending Engineer, Kaithal Circle issued a tentative seniority list on 21.12.2012 in which the petitioner's name has been shown at Sr. No.46 whereas the private respondents No.4 to 6 are at Serial No.47, 48 and 50, respectively. The petitioner had no objection insofar as tentative seniority list. Consequently, he has not filed his objection. Without giving opportunity to the petitioner, the final seniority list of Class-IV has been finalized on 28.11.2013 in which the petitioner's name has been pushed down from 46 to 85 without giving opportunity to the petitioner. Further on 28.11.2013, the date on which the Class-IV employees list was finalized on the very same day, respondent Nos.4 to 6 were promoted to the post of Water Pump Operator-II. Thus, the petitioner is aggrieved by the order of promotion given to the private respondents to the post of Water Pump Operator-II while ignoring his claim. Hence, the present petition.

3.) Learned counsel for the petitioner submitted that petitioner was appointed in Bhiwani Circle and on 3.5.1995, he has been transferred from Bhiwani to the then Kurukshetra Circle which is now Kaithal Circle. Such a transfer from Bhiwani to Kaithal was in the public interest. No doubt mutual transfer is obtained among the two persons at the same time in the order of transfer, it is mentioned that it is in public interest. Therefore, the service rendered in Bhiwani Circle is required to be taken into consideration for the purpose of extending the service benefits including seniority in the

have rightly assigned the ranking in the tentative seniority list at serial No.46. Thereafter, pushing the petitioner from 46 to 85 is without authority of law so also without giving opportunity to the petitioner. Hence, the promotion order given to the private respondent to the post of Water Pump Operator Grade-II is liable to be set aside, while restoring seniority of petitioner at sr. No.46 and to promote petitioner from the date of private respondents were promoted as Water Pump Operator-II.

4.) Per contra learned counsel for the official respondents submitted that having regard to the guidelines issued by the Engineer-in-Chief, Haryana PWD relating to regular mechanical establishment guidelines for transfer issued on 13.6.2008 whereunder an employee transferred from one Circle to another Circle other than public interest, the seniority rendered in the parent circle would not be counted and seniority would be counted if it is in public interest. Since, the petitioner transferred on 3.5.1995 from Bhiwani to Kurukshetra (now Kaithal) was mutual transfer and it is in private interest and not in public interest. Consequently, ranking assigned to the petitioner in the tentative seniority list at Sr. No.46 has been changed to 85 in the final seniority list dated 28.11.2013. Thus, the petitioner has not made out a case so as to interfere with the order of promotion of the private respondents.

5.) Learned counsel for the private respondents vehemently contended that in terms of the mutual transfer of the petitioner dated 3.5.1995 (Annexure R-2) read with the guidelines for transfer dated 15.5.1998 the petitioner lost his seniority in the Bhiwani Circle. Consequently, his service is required to be counted in the Kaithal Circle

been regularized. Hence, the private respondents are senior to the petitioner. Therefore, there is no infirmity in the order of promotion.

6.) Heard learned counsel for the parties.

7.) Rules of recruitment governing the post of Water Pump Operator-II is issued by the State Government called the Haryana Public Health Engineering Department Circle Cadre Mechanical Establishment (Group-C) Service Rules, 2009. Title of the Rules itself crystal clear that the post of Water Pump Operator-II is a circle cadre. Since the petitioner's parent circle is Bhiwani on his transfer from Bhiwani to the then Kurukshetra circle on 3.5.1995, the service rendered in Bhiwani Circle is to be counted or not is the question with reference to mutual transfer of petitioner and one Sh. Dalip Singh vide Annexure R-2 dated 3.5.1995. Order of transfer reads as under:-

“The following mutual transfer of M.C.C. is hereby posted with immediate effect in public interest.

<i>Sr. No.</i>	<i>Name & Designation</i>	<i>From</i>	<i>To</i>	<i>Remarks</i>
1.	Sh. Dalip Singh, MCC	PHD No.2 Kaithal	PHD Narnaul	Against 2
2.	Sh. Prithvi Singh, MCC	PHD Narnaul	PHD No.2 Kaithal	Against 1

Dated 01.05.95

SENSI SINGH
(CHIEF ENGINEER)

Endst No. 2128-31-PH/GA-I

Dated 03.05.95

A copy of the above is forwarded to the following for information and necessary action:-

- 1. Superintending Engineer, Public Health Circle, Jind/Bhiwani.*
- 2. Executive Engineer, Public Health Division No.2 Kaithal/Narnaul*

No TA & DA is admissible to the above named officials”

mutual transfer order of transfer reveals that it is in public interest. At the same time, it is stated that no TA and DA. Consequently it is to be understood as transfer is in the public interest or private interest. Mutual transfer is to be treated as public interest for the reasons that only on understanding transferring one employee to another employees place. Further order itself shows that it is in public interest. Merely stating that no TA and DA that does not mean that it is not in public interest. Moreover, the guidelines issued by the Chief Engineer dated 15.5.1998 vide Annexure R-1 cannot be taken into consideration for the reasons that method of recruitment to the post of Water Pump Operator Grade-II is issued by the Government. Consequently, the Government alone is the competent authority to issue guidelines. However, the Government has not delegated the powers to the Chief Engineer for issuing guidelines in respect of transfer of employees in the regular mechanical establishment. That apart before altering the petitioner's ranking in the tentative seniority list to disadvantage to the petitioner at 85 from sr. No.46, the petitioner has not been provided opportunity. Therefore, the concerned Superintending Engineer is hereby directed to assign the petitioner's ranking in the final seniority list on the score that the petitioner's transfer from Bhiwani to Kaithal is in public interest. Further it was noticed that in order to favour the private respondents, the Superintending Engineer has set right the tentative seniority list dated 21.12.2012 on 28.11.2013 and on the very same day, private respondents have been promoted which indicates that in order to promote the private respondents, list has been finalized. In other words hurriedly, the promotion of the private respondents have been ordered to the post of Water Pump Operator Grade-II. In view of these facts and

circumstances, promotion order Annexure P-1 is set aside. The Superintending Engineer is hereby directed to rectify the seniority of the petitioner within a period of three months and thereafter reconsider the petitioner's name as well as private respondents' claim for promotion to the post of Water Pump Operator-II w.e.f. 28.11.2013. However, till a decision is taken, the private respondents should not be disturbed from the post of Water Pump Operator-II.

8.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

April 20, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.