

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6575-2012 (O&M)
Date of decision: 16.01.2017

Man Singh

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Harkesh Manuja, Advocate for the petitioner
Mr.Keshav Gupta, AAG Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner was appointed as Corporal Clerk in the Home Guards Haryana on 27.9.1966. He was promoted as Havaladar (Clerk) on 24.4.1969 and then as Platoon Commander on 30.6.1979 and thereafter, Company Commander on 17.5.2005. Prayer of the petitioner is that his notional pay should be stepped up w.e.f. 31.7.1986, when his junior Ram Bhaj Rathi was promoted as Company Commander, instead of 23.6.1987. Further prayer of the petitioner is that he has been granted notional promotion and notional pay fixation equal to his junior Surender Singh of reserved category and that the benefit from the actual date of promotion has not been released in terms of the order dated 7.1.2008, which is an enclosure with the impugned order dated 22.9.2011 (Annexure P4). The petitioner has also produced seniority list of himself and that of Ram Bhaj Rathi in this petition.

In the reply, State has denied that seniority list. Plea has been taken that promotion to the post of Platoon Commander is made from two

feeder cadres. First is the cadre of Havaladar (Clerk) and the second is cadre of Havaladar (Instructor). Petitioner belongs to the cadre of Havaladar (Clerk) and Ram Bhaj Rathi belongs to Havaladar (Instructor). It was further stated that the petitioner was appointed as a Corporal Clerk in the year 1969 and Ram Bhaj Rathi was appointed as Corporal Instructor in the year 1970 in different cadre. Pay scale of two feeder cadres i.e. Havaladar (Clerk) and Havaladar (Instructor) is different. The respondents have relied upon Haryana Home Guards and Civil Defence Headquarter and Field Cadre (Group C) Service Rules 1999 (amended in the year 2002), which regulates the promotion to the post of Platoon Commander. The actual position of seniority of Ram Bhaj Rathi and the petitioner in the seniority list of 1980, 1982, 1983, 1984, 1988 and 1997 is also reproduced as under:-

<i>Year of Seniority list of Platoon Commander</i>	<i>Sr.No. Of Rambhaj Rathi</i>	<i>Sr. no. of petitioner</i>
1980	39	52
1981	37	50
1983	34	46
1984	33	45
1988	26	37
1997	19	29

It was stated that due to inadvertent mistake of the office, Ram Bhaj Rathi, who was always senior to the petitioner in the Platoon Commander rank was shown at serial No. 25, while petitioner was shown at serial no.20 in the seniority list of 2002. This is a clerical mistake and petitioner wants to take undue advantage of the same. Petitioner retired from service on 30.6.2008 and has no claim against Ram Bhaj Rathi who retired much before the petitioner.

I have heard learned counsel for the parties and have also carefully gone through the file.

The undisputed position is that the petitioner and Ram Bhaj Rathi belong to two different feeder cadres i.e. Havaladar (Clerk) and Havaladar (Instructor). The order Annexure P4 enumerates the dates on which petitioner and Ram Bhaj Rathi were appointed and promoted to two different posts. The said dates are not denied. Petitioner was promoted as Platoon Commander on 30.6.1979, whereas Ram Bhaj Rathi was promoted much earlier as Platoon Commander i.e. on 1.3.1976. Though Ram Bhaj Rathi belongs to reserved category and got accelerated promotion but only the person belonging to his cadre could claim the catch up principal to claim seniority over him, if he is promoted as Platoon Commander. Petitioner being belonging to some different cadre cannot claim seniority over Ram Bhaj Rathi, who was promoted as Platoon Commander prior to the petitioner. Thereafter, Ram Bhaj Rathi was promoted as Company Commander on 31.7.1986 and petitioner was promoted as Company Commander on 17.5.2005. Ram Bhaj Rathi retired on 31.10.2002 and the petitioner retired much later on i.e. on 30.6.2008.

I am of the view that since promotion to the post of Platoon Commander was from two different feeder cadres, therefore, the petitioner cannot claim seniority over reserved candidate, who was promoted from a different feeder cadre. Hence, claim of the petitioner regarding stepping up of his pay equal to that of Ram Bhaj Rathi is dismissed.

Now, the petitioner claims that even as per order dated 7.1.1998, which is part of impugned order dated 22.9.2011 (Annexure P4), his pay has been stepped up equal to his junior Surender Singh and it was ordered that the monetary benefit will be granted to general category employees from the date of their actual promotion. It is stated that no such monetary benefit has

been released to the petitioner. The State has relied upon the instructions dated 22.11.2006, which shows that in such cases, only notional promotion is allowed and no payment of arrears of salary are to be given as the employee has not worked on that post before the period of notional promotion. In any case from the date of actual promotion such employee is entitled to monetary benefit.

In the circumstances, the respondents are directed to pass speaking order within two months from the date of receipt of a certified copy of this order as to what actual benefits were available to the petitioner from the date of actual promotion and if such benefits were available, the same be released with interest as per government instructions and if these were not available, state reasons as to why these were not available. In case the monetary benefits are available to the petitioner, then the consequential benefits in the form of re-fixation of pension shall also follow.

The writ petition is accordingly disposed of in above noted terms.

16.01.2017*gk***(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

No