

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.27214 of 2015

Date of Decision: 16.11.2017

Bachu Singh

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sourabh Bajaj, Advocate,
for the petitioner.

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

Mr. Aakanksha Sawhney, Advocate,
for respondents no. 2 and 3.

Mr. Dinesh Kumar, Advocate,
for respondent no.4.

Amol Rattan Singh, J.

The petitioner seeks quashing of the impugned order, Annexure P-12, dated 14.12.2015, by which he has been reverted to the post of Fireman, from that of Assistant Fire Operator.

2. Learned counsel for the petitioner has argued at length with regard to the petitioner being allowed to continue on the post he was promoted to, (Assistant Fire Operator), from which he has been now reverted vide the impugned order, on account of the fact that the adverse remarks against respondent no.4, Chanderkant, have been expunged by the competent authority (though the punishment of stoppage of one annual increment with temporary effect has been maintained) and consequently, the said respondent is to be promoted to the post.

3. It is not denied by the petitioner that respondent no.4 is senior to him in service as a Fireman, and that the said respondent was not considered for promotion at the time when the petitioner was promoted on 07.10.2013 (vide the order Annexure P-5), because at that time respondent no.4 had an entry of doubtful integrity in his ACRs (which has now been expunged as already noticed).

4. The first note in the order of promotion of the petitioner (Annexure P-5), states to the following effect:-

“1. The above promotions have been made on the basis of joint ranking list of below status employee working as Senior Fireman/Fireman/DCPO in HPGCL on provisional basis to meet the urgent requirement of the work. These promotions will not confer upon them any right to claim seniority over those who are otherwise senior to them or out of those, whose cases have not been decided for one reason and others whatsoever. The above promotions have been made on the clear understanding that if there is any senior person (s) to them, they are liable to be reverted to their original post of Fireman without any notice to make room for senior person (s).”

Thus, once the 4th respondent became eligible for promotion upon expunction of the adverse remarks against him, even in terms of the order of promotion of the petitioner, he was liable to be reverted to the post of Fireman, to make the room for the senior person.

5. That being so and it being specifically stated on affidavit of Mr. S.K.Wadhwa, Chief Engineer, Panipat Thermal Power Station, Panipat, filed in Court by learned counsel for the Corporation, that all 15% posts falling to the share of the category that the petitioner and respondent no.4 belong to (“below status quota”), all stand filled up, the contention of learned counsel for the petitioner, to the effect that the petitioner be allowed to continue on

the existing vacant posts falling to another quota cannot be accepted, which would obviously lead to litigation by those whose chances of promotion from those quotas would be affected.

6. It is also not denied by the petitioner that the relevant service Rules stood amended w.e.f. 2009, and in fact it is admitted that the petitioner could also be promoted to the post of Assistant Fire Operator directly from the post of Fireman only on account of such amendment.

(Because otherwise, in the unamended Rules, for being promoted to the post of an Assistant Fire Operator, only a Senior Fireman was eligible, with three years of service etc.)

7. As regards the fact that vide the order Annexure P-6, the punishment of stoppage of one annual increment with temporary effect has been maintained, obviously the 4th respondents' case for promotion would only be postponed for a period of one year, till the effect of the punishment had worn off, after which he would be entitled for promotion as if no order had been passed against him. Hence, upon his promotion, if there is no other post left vacant on which the petitioner can be adjusted as an Assistant Fire Operator, within his own quota, there is no option but to revert the petitioner.

8. Both learned counsel for the respondents also point to the fact that the petitioner has mislead this Court by stating that no reply was filed by him to the show cause notice issued prior his reversal, whereas as a matter of fact, he had duly replied to the aforesaid show cause notice even before the filing of the petition. Thus, the contention is that had he disclosed that fact to this Court when notice was issued in this petition, possibly the stay order may not have been passed on 23.12.2015.

Keeping in view the above fact, while dismissing this petition, a cost of Rs.5000/- is imposed upon the petitioner for concealing a material fact.

(AMOL RATTAN SINGH)
JUDGE

November 16, 2017
dharamvir/dinesh

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |