

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.6507 of 2015

Date of Decision:10.03.2017

Baljit Singh

... Petitioner

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. B.S. Sudan, Advocate for the petitioner.

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

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has questioned the validity of order dated 28.3.2014 (Annexure P-13) by which order dated 17.7.2009 whereby the petitioner was promoted to the post of Auditor w.e.f. 4.5.2000 and further to the post of Assistant w.e.f. 3.11.2006 is withdrawn.

The petitioner while working as a clerk with reference to knowledge of computer was accommodated or posted as a computer operator on 29.3.1995. Thereafter on 17.12.2008, the respondents have reiterated that the petitioner is in the cadre of substantive permanent clerk. Petitioner's name was considered for promotion to the post of Auditor and Assistant on 20.7.2009 while giving promotion to the post of Auditor and Assistant w.e.f. 4.5.2000 and 3.11.2006 respectively. Thus, the petitioner had lien in the clerk line and his name was not considered for promotion to the post of AFSO/Deputy Superintendent. Whereas petitioner's junior name has been considered. In order to rectify the so called error committed by the respondents that the petitioner lien would be in computer operator, to that extent, they have passed an order dated 13.8.2013.

Having regard to the above facts and circumstances, the petitioner filed CWP No.268 of 2014. During the pendency of the said petition, the respondents have withdrawn the promotions granted to the post of Auditor and Assistant vide order dated 28.3.2014. The petitioner has presented this petition challenging the order dated 28.3.2014 (Annexure P-13).

Learned counsel for the petitioner submitted that the official respondents are passing one or the other order in order to deny the promotion to the petitioner to the post of AFSO/Deputy Superintendent by virtue of withdrawal of promotion to the post of Auditor and Assistant vide order dated 28.3.2014. The petitioner's claim for promotion to the post of AFSO/Deputy Superintendent is being defeated. It was further submitted that withdrawal of promotion to the post of Auditor and Assistant dated 28.3.2014 is without notice. Hence, the order dated 28.3.2014 is liable to be set aside.

Per contra, learned counsel for the respondents-State submitted that petitioner has been posted as a computer operator at his request. Therefore, the official respondents have rectified the cadre of the petitioner as clerk to that of computer operator. Therefore, there is no infirmity in withdrawing the promotion to the post of Auditor and Assistant on 28.3.2014.

Heard learned counsel for the parties.

Crux of the matter is whether the petitioner is entitled to continue in the clerical stream or computer stream. Even though the petitioner was posted or appointed at his request as a computer operator on 29.3.1995. He had the lien in the clerical line for the reasons that the post

of computer operator is not one of the cadre in the department so as to say whether the post of computer operator is required to be filled up by direct recruitment or promotion. Therefore, the petitioner had lien over the clerical stream. The same was taken into consideration by the official respondents way back on 17.12.2008 which has been clarified vide Annexure P-6. Further the petitioner was promoted to the post of Auditor and Assistant retrospectively w.e.f. 4.5.2000 and 3.11.2006 on 20.7.2009. At the time of filling up the post of AFSO/Deputy Superintendent, though, the petitioner was eligible but he was not promoted. In order to deny him the benefit of promotion to the post of AFSO/Deputy Superintendent, the official respondents resorted to pass an order that the petitioner had lien over the computer operator and not the clerical stream.

In view of these facts and circumstances, order dated 28.3.2014 is liable to be set aside on the ground of not issuing notice to the petitioner. Further the respondents are directed to issue detailed show cause notice, if they intend to do so and thereafter proceed to pass order after due consideration of the petitioner's reply to the show cause notice. The above exercise shall be completed by the respondents within a period of three months from today. The promotions made to the post of AFSO/Deputy Superintendent are subject to result of the decision which would be taken by the respondents.

With the above observation, the petition stands disposed of.

10.03.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No