

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

230

CWP No.8946 of 2015
Date of decision: 19.05.2017

Rishi Pal

..... Petitioner

Versus

State of Haryana and others

..... Respondents

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

Present:- Mr. Kuldip Singh, Advocate
for the petitioner.

Mr. Hitesh Pandit, Additional AG, Haryana.

P.B. BAJANTHRI, J. (ORAL)

Petitioner has questioned the validity of orders dated 17.09.2014 and 08.12.2014 vide Annexures P-7 and P-8 respectively. Petitioner while working as a Group 'D' employee amongst others, his name was considered for the post of Clerk under the Rules called the Haryana State Co-operation Department Head Office and Sub-offices (Group 'C') Service Rules, 1989. The post of Clerk is governed by Rule 9(k). There are three methods of recruitment to the post of Clerk i.e. 20% by promotion and 80% by direct recruitment or by transfer or deputation of an official already in service of any State Government or Government of India. The petitioner's name was considered under promotion quota and he was promoted on 13.09.2007. Thereafter, from time to time, increments have been extended to the petitioner. Now in the year 2014, respondents have noticed that petitioner was required to comply passing of departmental test

as per instruction which reads as under:-

“Shall have to pass the departmental type test in Hindi/Englsih at the speed of 25 or 30 words per minutes, respectively within a period of one year from the date of appointment, failing which the annual increment shall not be allowed to him. When he qualifies the type test, he will be allowed increments due to him from the date of qualifying the type test but no arrear will be given to him.”

In view of non-passing of prescribed departmental test by petitioner, respondents proposed to stop granting increments and also ordered for recovery of amount with reference to already granted annual increments. The petitioner aggrieved by the decision vide Annexures P-7 and P-8, presented this petition.

Learned counsel for the petitioner submitted that for non-passing of departmental test, the Competent Authority is required to exercise power of relaxation under Rule 17 of the 1989 Rules. It is submitted that in identical matters, the Competent Authority has exercised the power and condone passing of prescribed departmental test. Similar decision has not been taken or extended in the present petition. Thus, there is a discrimination in invoking power of relaxation under Rule 17 of the 1989 Rules.

On the contrary, learned counsel for the respondents fairly submitted that the Competent Authority has not invoked Rule 17 relating to power of relaxation before passing of orders dated 17.09.2014 and 08.12.2014 (Annexures P-7 and P-8) respectively.

Heard learned counsel for the parties.

The crux of the matter is whether the petitioner is entitled for annual increment with reference to relaxation provision of Rule 17 of the

1989 Rules or not. It is undisputed that the Competent Authority has invoked Rule 17 relating to power of relaxation and extended the benefit to similarly situated persons in respect of extended benefit of increments even though, they are not passed the prescribed departmental test. In not exercising power of relaxation under Rule 17 of the 1989 Rules in the present case amounts discrimination, it was the duty of the Competent Authority to invoke Rule 17 relating to power of relaxation before taking a decision to the extent whether an employee is not entitled for certain benefit under 1989 Rules.

In view of above facts and circumstances, orders dated 17.09.2014 (Annexure P-7) and 08.12.2014 (Annexure P-8) are set aside. Competent Authority is directed to invoke Rule 17 of the 1989 Rules and pass a fresh order.

The Competent Authority is also directed to take into consideration order relating to extending identical benefit to others while invoking Rule 17 relating to power of relaxation.

The above exercise shall be completed within a period of three months from today.

Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

19.05.2017
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No