

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

**CWP No. 16486 of 2001 (O&M)  
DECIDED ON: MARCH 21, 2018**

**RAM RATTAN VERMA THROUGH LR'S**

**....PETITIONER**

**VERSUS**

**STATE OF HARYANA & OTHERS**

**....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE JASPAL SINGH**

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

Mr. Ram Tilak Redhu, DAG, Haryana.

Mr. Rohit Ahuja, Advocate  
for respondents No. 2 to 4.

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**JASPAL SINGH, J**

By virtue of instant civil writ petition preferred under Articles 226 and 227 of the Constitution of India, petitioner has sought a writ in the nature of certiorari to quash the order dated 28.08.2000 (P-5) and also to quash the seniority list dated 01.12.1993 (P-6) as well as for issuance of a writ in the nature of mandamus directing the respondents to release his pension from the date of retirement i.e. 31.05.2000 as JE (F).

2. The contention of learned counsel for the petitioner while assailing the impugned order dated 28.08.2000 (P-5) as well as seniority list dated

01.12.1993 (P-6), is that the petitioner belongs to B.C. category and he was appointed as ALM on 11.10.1968 and was promoted as AFM on 17.12.1980. Subsequent thereto, he was promoted as JE vide order dated 15.01.1993 clearly showing that earlier he was promoted as AFM on 17.12.1980. Moreover, all the Annual Confidential Reports of the petitioner right from the beginning i.e. from the date of his joining up to date are outstanding and there is nothing adverse has been shown in his service record. However, he was served with a show cause notice dated 08.07.1999 (P-3) issued by respondent No.2 unfolding that respondent No.5-Hari Ram Verma who is placed at serial No. 868 in the seniority list, filed a civil suit at Bhiwani alleging that some of his juniors including petitioner have been promoted as JE (F) and are still working as such. The said civil suit was disposed of with the direction to respondent-Nigam to pass a speaking order on the status of promotion case of the afore-said Hari Ram Verma-respondent No.5. Moreover, as per tentative seniority list of AFM the name of the petitioner stands at serial No. 952 as per memo dated 15.06.1999.

3. Learned counsel for the petitioner further submitted that the afore-said show cause notice (P-3) was duly replied by the petitioner on 23.09.1999, asserting that earlier he was rightly shown senior to respondent No.5-Hari Ram Verma on the basis of Bio Datas supplied to the office of respondent-Nigam by the concerned field office relating to the petitioner as well as respondent No. 5. However, without considering his reply to the afore-said show cause notice (P-3), he was reverted by passing a non-speaking order dated 28.08.2000 (P-5). Respondents did not disclose at any point of time as to how the seniority list and on what basis his seniority has been changed, in which he has been shown at

serial no. 952 whereas, respondent No.5 has been shown at serial no. 868 particularly when petitioner was promoted as AFM on 17.12.1980 whereas, respondent No.5 joined and promoted to the post of AFM. Subsequent thereto, on 01.04.1982, when the respondents did not take any action for the rectification of the afore-said seniority list and withdrawal of the order dated 28.08.2000 (P-5) petitioner was left with no alternative except to file the instant petition. In fact, respondent No.5 remained junior and was promoted as AFM in the Month of April, 1982 whereas, petitioner was promoted and joined as such in the Month of December 1980. Thus, impugned order (P-5) as well as impugned seniority list (P-6) are not sustainable in the eyes of law and are liable to be quashed and benefits which have been withdrawn are deserve to be restored. Consequently, petitioner is entitled to be disbursed the pension as JE (F) from the date of his retirement i.e. 31.05.2000.

4. On the other hand, learned State counsel as well as learned counsel for respondents No.2 to 4 have controverted the afore-said submissions raised by learned counsel for the petitioner submitting that petitioner did not approach to the Court with clean hands and has not only suppressed but also mis stated the actual facts. Undisputably, petitioner has challenged his reversion order 28.08.2000 (P-5) as well as seniority list dated 01.12.1993 (P-6) on the ground that he his senior to respondent No.5 and some other officials, as he was promoted to the post of AFM on 17.12.1980 whereas, respondent No.5 was promoted as AFM on 01.04.1982. In fact, petitioner is not senior to respondent No.5. As per record, petitioner joined as Lineman on 04.11.1970 whereas, respondent No.5 joined as Lineman on 26.12.1969. Thus, he was senior to the petitioner. However, on account of some in-advertence or oversight petitioner

was promoted as AFM prior to respondent No.5.

5. Aggrieved against the promotion of the petitioner, respondent No.5 filed a civil suit at Bhiwani alleging that some of his juniors including petitioner have been promoted as JE and are still working as such. The said suit was disposed of with a direction to respondent-Nigam to pass a speaking order on the status of promotion case of respondent No.5. Thus, when the tentative seniority list was revised/recasted vide order dated 15.06.1999, it came to the light to the respondents that petitioner's name figured at serial No. 952 whereas, the name of respondent No.5 was at serial No. 868 and the promotion to the post of JE (F) has been made up to serial No. 844. Meaning thereby, that petitioner was wrongly promoted as JE (F) and many seniors in the General Category & reserved category have not been promoted as JE (F) and are still working as "AFM". It was only on account of revised/recasted seniority list, petitioner has been reverted that too, after serving him show cause notice and giving a patient hearing. Accordingly, they prayed for the dismissal of instant petition.

6. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and has minutely scanned the documents available on file and is of the considered view that that the submissions made by the respondents carry legal and factual weight.

7. It is evident from the documents available on file that the petitioner has rightly been reverted vide impugned order dated 28.08.2000 (P-5) by revision/recasting of his seniority list. Seniority list does not suffer from any illegality or infirmity and is absolutely in consonance with the length of service and date of joining and promotion as "AFM". It is crystal clear from the documents available on file as well as stand taken by the respondents (which is

also otherwise not a denying fact) that petitioner joined as Lineman on 04.11.1970 whereas, respondent NO.5 joined much prior to him i.e. on 26.12.1969. Since, respondent NO.5 was senior to the petitioner, in the seniority list of Lineman, name of respondent No.5 figured at 2387 whereas, petitioner's name was shown at 2695 in the seniority list.

8. However, subsequent thereto, another seniority list was prepared and issued on 01.12.1993, in which, petitioner was show at serial No. 952 whereas, respondent No.5 was shown at serial No. 868. So it is clear that petitioner is junior to respondent No.5 and some other officials. Thus, by passing an order whereby, seniority has been revised/recasted respondents have only rectified the mistake already committed on account of some in advertence. Subsequent thereto, order of reversion of the petitioner dated 28.08.2000 (P-5) has been passed.

9. It is pretty settled that where seniority given to an employee by in-advertence or misinterpretation of the rules and subsequently, the Government realizes its mistake, in such a situation, government is competent to withdraw the benefit erroneously given and in such circumstances, Article 311 of the Constitution of India would not be attracted. Identical controversy came up for hearing before the Full Bench of this Court in **Sunder Lal and others vs. The State of Punjab through the Secretary to Government PWD Chandigarh and 236 others** and after having discussed all the relevant rules as well as Article 311 of the Constitution of India, the following observation was made :-

*“if owing to some bona fide mistake, the Government has taken a decision regarding the confirmation of an officer, it can certainly revise its decision at a subsequent stage, when the mistake comes to its notice. The mistake can be corrected and it cannot be said that it*

*should be allowed to perpetuate even when the same is discovered. The consequent reduction of the officer could not amount to reduction in rank and attract the applicability of [Article 311](#) of the Constitution. Such a reduction is the necessary result of any routine administrative decision. It is only when an officer brings his case within the purview of [Article 311](#) of the Constitution that he can attack the legality of any order passed by the Government, which might adversely affect his career in Government service. Such a case does not come within the four corners of [Article 311](#) of the Constitution. In the instant case, the Government, after having misinterpreted the Rules, had given war service concessions to the petitioners. Subsequently, they realized their mistake and withdrew those benefits, with the result that the seniority of the petitioners was affected. The Government could correct the error and such a decision would not come within the ambit of [Article 311](#) of the Constitution”.*

10. While rendering the afore-said judgment, the Full Bench of this Court also relied upon the previous judgments i.e. **Dilbagh Rai vs. The Punjab State; 1968 Services Law Reporter 503; Benukar Mahata v. State of West Bengal; AIR 1963 Cal. 563; N. Devasahayam vs. The State of Madras; AIR 1959 Mad 1.**

11. Adverting to the facts of the case in hand, it was only due to wrong preparation of seniority list as well as promotion of the petitioner as JE (F) number of other officials senior to him were ignored and as such, by passing the impugned order dated 28.08.2000 (P-5), no legal right of the petitioner is infringed. Rather, it can be said that only respondents have corrected and rectified the wrong which had occurred earlier while preparing the seniority list owing to some bona fide mistake.

12. In such a situation, submissions made by learned counsel for the petitioner do not carry any legal or factual weight. Rather, the same are against the actual and factual facts. Thus, this Court is of the considered view that impugned order dated 28.08.2000 (P-5) as well as impugned seniority list 01.12.1993 (P-6) are absolutely in consonance with the actual facts as well as rules and legal proposition applicable to the facts and circumstances of the case in hand.

13. Since the reversion of the petitioner has been upheld, thus, he is not entitled to any sort of pensionary benefit or arrears as JE (F).

14. In the light of what has been discussed above, this court does not find any merit in the instant petition. As such, the same is dismissed in toto but with no order as to costs.

**MARCH 21, 2018**  
**sham**

**(JASPAL SINGH)**  
**JUDGE**

***Whether speaking/reasoned***      ***Yes/No***

***Whether reportable***                      ***Yes/No***