

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 14861 of 2014 (O&M)

Date of Decision: 07.09.2018

Angrej Devi and others

...Petitioners

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Surender Pal, Advocate
for the petitioners.

Mr. Harish Rathee, Senior DAG Haryana.

RAJIV NARAIN RAINA, J. (Oral)

1. The seniority dispute brought for adjudication in this case is between Clerks and Ticket Verifiers working in the Transport Department, Haryana. The petitioners belong to the ministerial cadre serving on the post of Clerks. The private respondents are Ticket Verifiers whose posts were merged with that of Clerks by way of amendment in Haryana Roadways (Group 'C') Service Rules, 1995 (in short "1995 Rules") vide notification dated 07.12.1999 (P-3) by abolishing the post of Ticket Verifier. Post of Ticket Verifier also belongs to the ministerial staff and services of both are governed by the provisions of the 1995 Rules. As per Rule 9 (h) of the 1995 Rules the recruitment for the post of Clerk (including Workshop Clerk, Diesel Pump Clerk, Preventive Maintenance Clerk, Ledger Keeper, Counter Clerk, Assistant Accountant and Store-cum-Stock Clerk) is made 20%

by way of promotion from amongst the employees serving on the posts of Peon, Restorer, Sweeper, Gunman, Chowkidar, Mali-cum-Water Carrier and 80% by way of direct recruitment or by transfer or deputation of any official already in the service of any State Government or Government of India.

2. The post of Ticket Verifier is a feeder cadre for promotion as Clerks etc. As per Rule 9 (m) of the 1995 Rules the recruitment to the post of Ticket Verifiers is by direct recruitment or by transfer or deputation of an official already in the service of any State Government or Government of India. Ticket Verifiers are entitled to promotion to the post of Clerk to the extent of 20% of the vacancies as the post of Ticket Verifier was clubbed with posts of Peon, Restorer, Sweeper, Gunman, Chowkidar, Mali-cum-Water Carrier.

3. As per Appendix B (Rule 7), the academic qualification and experience for appointment other than by direct recruitment for the post of Clerk (including Workshop Clerk, Diesel Pump Clerk, Preventive Maintenance Clerk/Ledger Keeper, Counter Clerk, store-cum-stock Clerk and Assistant Accountant) is matriculation with Hindi in addition to five years experience on the post of Peon, Restorer, Sweeper, Gunman, Chowkidar, Mali-cum-Water Carrier in Haryana Roadways or Ticket Verifier with at least two years experience.

4. The question which falls for consideration in this case is as to how the posts of Clerk and Ticket Verifier are to be treated, when

they are two different posts; in order to work out the *inter se* seniority after merger and abolition of the post of Ticket Verifier from the 1995 Rules. If two years experience is required as a Ticket Verifier for promotion as Clerk then the post of Ticket Verifier is reckoned as a lower post with lower pay-scale. The length of service as Ticket Verifier would be irrelevant as incumbent would steal a march over the rights of the petitioning Clerks. Ticket Verifiers would have a right to seniority as Clerks only from the date of merger for promotion to higher post and for entitlements to other service benefits based on principle of seniority. However, the length of service of Ticket Verifiers would count for other service benefits like pension etc.

5. The grievance in this petition is against the promotion order dated 28.11.2013 by which the department promoted the private respondents to the further higher post of Assistant, Accountant and Junior Auditor by treating the period of service as Ticket Verifier towards seniority.

6. Learned State counsel argued that though the posts of Clerk and Ticket Verifier are separate and different posts as per the 1995 Rules but the same were merged in the year 1999. Therefore, after amendment only one cadre of Clerks exists and private respondents working as Ticket Verifiers prior to amendment or rules are entitled to be promoted to the post of Assistant/Accountant/Junior Auditor in accordance with the existing rules. The respondents have relied on the

decision of this Court in CWP No. 21094 of 2014, Babu Lal and others Vs. State of Haryana and others decided on 16.11.2017. This judgment is not related to the subject matter of this case and carries no ratio applicable to this case.

7. In my view view, the impugned order of promotion suffers from fundamental error which deserves to be corrected because it fails to take note of the merger clubbing two different posts together when one was a feeder post to the other (Clerks) for purposes of promotion as Assistant etc. The action of the respondents in promoting Ticket Verifiers by the impugned order dated 28.11.2013 is on the face of it not legally sustainable as the petitioners have been wrongly ignored and, thus, the order deserves to be declared illegal, arbitrary and discriminatory and liable to be quashed in order to restore the rights of the petitioners to them of which they were deprived. The Ticket Verifiers shall be placed below the Clerks on the date of merger. Thereafter, the seniority list be revised/drawn and published on the website of the Department

8. As a result of the above discussion, this petition is allowed. The impugned order is quashed. A direction is issued to the respondents to consider the case of the petitioners for promotion to the higher post of Assistant, Accountant and Junior Auditor from the date when their juniors Ticket Verifiers re-designated as Clerks were promoted on 28.11.2013 and to do so with all consequential benefits provided they

are otherwise eligible for promotion. In case there are insufficient vacancies to adjust the private respondents, they may have to be reverted. However, in case reversion is contemplated, it would not be without hearing the affected parties. However, this exercise will not await the consideration of the cases of the petitioners, which is made time bound i.e. within two months from the date of receipt of a certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

07.09.2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No