

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15242-2015

Date of decision: 09.07.2018

Sunil Kumar

...Petitioner

V/s.

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.

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

RITU BAHRI, J. (Oral).

The petitioner is seeking quashing of the transfer order dated 23.07.2015 (Annexure P-7) whereby he was transferred to Fire Station, Sirsa from Panchkula.

The case made by the petitioner was that the transfer order was passed keeping in view that a complaint was made by some junior against him. He has referred para No. 11 of the petition, in which he has mentioned his ACRs with respect to 2010-11, 2011-12, 2012-13 and 2013-14.

While issuing notice of motion on 28.07.2015, operation of the impugned order was stayed. After notice of motion, reply was filed by the Director, Urban Local Bodies-cum-Fire Service, Haryana, Panchkula on behalf of respondents No. 1 and 2 on 11.02.2016 taking the stand that as per initial appointment of the petitioner, his service was governed under the Haryana Municipal Corporation Employees (Recruitment and Conditions), Service Rules, 1998 (Annexure R-1) and he can be transferred anywhere in the State of Haryana. It is admitted in para No. 6 of the preliminary submissions that the Department was receiving various serious complaints

regarding misconduct and anti office activities with the collusion of his seniors which was effecting to the office management and discipline in other employees. They have placed on record Annexure R-2, a copy of the complaints received from all fire staff working at Fire Station Panchkula against Sunil Kumar, Fireman.

In replication to the written statement, the petitioner has placed on record inquiry conducted by Joint Commissioner, Municipal Corporation, Panchkula whereby the complaint against him has been enquired and it has been found that he is working since the year 2010 and no promotion has been given to him. The petitioner is seeking promotion and the promotion is to be decided by a competent authority in accordance with law whether any employee is eligible for promotion or not.

As per the complaint, transfer of the petitioner is being sought as his father-in-law had managed to get commendation certificate ignoring the eligibility of the employees and by transfer, the work of Fire Brigade Centre, Panchkula can run properly.

After hearing learned counsel for the parties and going through the facts of the present case, it transpires that the petitioner has been transferred on account of various complaints from his colleagues and emergency service like fire station was effected due to lack of coordination between the petitioner and other section of the employees. As per the enquiry report (Annexure P-10), some employees of fire brigade have filed complaints against Shamsher Singh Malik, Ex. Fire Brigade Officer and Sunil Kumar, Fireman. It was alleged that Shamsher Singh Malik was giving benefit to his son-in-law Sunil Kumar, Fireman. He is making attempts to get promotion for his son-in-law and in this backdrop the

seniority list for the last 4 ½ years is not issued. The Joint Commissioner, Municipal Corporation, Panchkula in the enquiry report (Annexure P-10) stated that Sunil Kumar was working in the office since 29.12.2010 and no promotion has been given to him and Commissioner, Municipal Corporation is competent to give promotion. Sunil Kumar and his father-in-law have no role to play in the above said procedure. Even seniority list is not to be issued by Sunil Kumar or his father-in-law. Vide memo dated 13.02.2014, the Director, Fire Brigade Services, Haryana, Chandigarh has informed the Commissioner, Municipal Corporation, Panchakula, that **promotional matters are not be considered till the time of integration of services and preparation of their joint category wise seniority list adjustment of approved posts are not made by Government. The seniority list has to be prepared by Government.** With regard to harassment, it is further found that Shamsheer Singh Malik has been transferred from District Panchkula. A perusal of the enquiry report makes it abundantly clear that the petitioner as well as his father-in-law have no role in making the seniority list or influencing the promotional orders as the competent authority in this regard was the Commissioner, Municipal Corporation. Moreover, it is the Director, Fire Brigade Services, Haryana, who vide letter dated 13.02.2014 has already informed that the integrated seniority list to be made by the Government, has not been made by the Government so far. Hence, the complaints made against the petitioner has no base and the enquiry report has not been disputed by the respondents. A perusal of the details shows that dispute with regard to issuing of joint category wise seniority list and promotion is still pending and no complaint is pending with the Department. Keeping in view this fact, this petition is

allowed and transfer order dated 23.07.2015 (Annexure P-7) is set aside.

09.07.2018

Divyanshi

(RITU BAHRI)
JUDGE

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