

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

1. CWP-18783-2014

Samunder Singh ... Petitioner

Vs.

Bhakra Beas Management Board and others ... Respondents

2. CWP-6046-2016

Samunder Singh ... Petitioner

Vs.

Bhakra Beas Management Board and others ... Respondents

3. CWP-23820-2015

Samunder Singh ... Petitioner

Vs.

Bhakra Beas Management Board and others ... Respondents

Date of Decision: 26.02.2018

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

Present : Mr. S.S. Dalal, Advocate
for the petitioner.

Mr. Karan Nehra, Advocate
for the respondents.

P.B. BAJANTHRI J. (Oral)

By this common order, all the aforementioned writ petitions shall be decided together being identical. In these three petitions, petitioner's grievance is relating to grant of Second Time bound Promotion Scale (for short "TBPS") in the post of Driver, withdrawal of 1st TBPS and, withdrawal of posting as a driver from the post of Chowkidar and posting him as a Chowkidar.

2. The petitioner while working as a Chowkidar, he was accommodated as a driver based on the office proposal. Office order was passed on 7.5.1997 (Annexure P-3). Thus, petitioner was working as a driver. As and when he completed eligibility for the purpose of TBPS, he had requested the respondents to extend the benefit of TBPS. Accordingly,

1st TBPS was extended. Thereafter when it was due for the 2nd time, official respondents noticed that initial appointment of the petitioner is against Chowkidar post and he has been posted as a driver. In other words, his lien would be over the post of Chowkidar and not as a driver as he was not appointed or promoted. Thus, official respondents proceeded to withdraw 1st TBPS. Thereafter they reverted the petitioner from the post of Driver to that of Chowkidar while denying 2nd TBPS. Hence, these three petitions are presented by the petitioner.

3. Learned counsel for the petitioner submitted that since May 1997, he is working as a driver. Official respondents have not raised any objection. Even at the time of granting 1st TBPS. They have taken action to refuse 2nd TBPS and further reverted the petitioner from the post of Driver to that of Chowkidar when petitioner demanded for the 2nd TBPS. Learned counsel for the petitioner submitted that when the official respondents have extracted work of the driver post from 7.5.1997 without there being any break, abruptly they cannot revert him to the post of Chowkidar. It was also submitted that while passing office order dated 7.5.1997, official respondents have taken note of Regulation 21 of the Bhakra Beas Management Board Class III and Class IV Employees (Recruitment and Conditions of Service) Regulations 1994 (for short "1994 Regulation"). It was also submitted that merely not using the word of appointment as a driver that does not take away the benefit attached to the post of Driver having regard to the fact that petitioner has rendered service from May 1997 till passing of the impugned order. By virtue of interim order, he is continuing as a driver. It was also submitted that petitioner has been confirmed in the post of driver on 11.2.2011 w.e.f. 7.5.1999. Therefore,

impugned action are arbitrary and illegal.

4. Per contra, learned counsel for the respondents submitted that initial entry of the petitioner to the post of driver is not in accordance with law. He was not subjected to any source cadre as prescribed under the Rules for the post of Driver. It was further submitted that he was only posted as a driver. Consequently, his lien would remain over the post of Chowkidar. Therefore, by over sight, petitioner has been extended the benefit of 1st TBPS. Thereafter, official respondents have noticed that initial posting of the petitioner as a driver is not in accordance with law. Consequently, he is not entitled to any service benefits attached to the post of driver like 1st TBPS and 2nd TBPS. Consequently, necessary action has been taken to withdraw the TBPS and reverting him to the post of Chowkidar by withdrawing orders issued vide Annexure P-3 as well as consequential confirmation order. Therefore, there is no infirmity and the petitioner has not made out a case to seek any benefit attached to the post of driver.

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition is whether petitioner is entitled to service benefits on the post of driver or not?

7. Undisputedly in the year 1997 official respondents have invoked Regulation No.21 of 1994 Regulation for the purpose of accommodating the petitioner to the post of Driver from the post of Chowkidar. Even though, official respondents were not satisfied with reference to Regulation 21 of the 1994 Regulation as contended by the learned counsel for the respondents. However, petitioner has been posted as a Driver. It is not for a particular period so as to contend that he has been posted as a driver from the post of Chowkidar temporarily or on ad-hoc

basis. Petitioner had been continuing as a driver from 1997 till the impugned action of the respondents. Further by virtue of interim order, petitioner has been continued in the post of Driver. When the official respondents have invoked Regulation 21 of the 1994 Regulation, no doubt at that time they could have rejected the petitioner's claim or proposal posting him as a Driver to the post of Chowkidar having regard to the fact rules/regulation in respect of Driver post for which petitioner was not entitled at the initial stage in the year 1997. Having entertained him in the post of Driver from 1997 to this day, Respondents cannot revert the petitioner to the post of Chowkidar in the year 2016. Therefore, impugned actions are liable to be set aside. Further official respondents are hereby directed to invoke Regulation 21 of the 1994 Regulation and extend the benefit as if petitioner was appointed as a Driver in the year 1997. Due to the default on the part of the official respondents from 1997 to 2016 petitioner cannot be penalized. In other words, official respondents could have taken appropriate action in the year 1997, in the year 2011 when the proposal for confirmation was proceeded and further while granting 1st TBPS. Official respondents have opened their eyes as and when petitioner demanded 2nd TBPS. In fact petitioner has hardly worked as a chowkidar i.e., less than three years i.e. from the year 1994 to 1997. Whereas from 1997 till date he is working as Driver.

8. In view of the above facts and circumstances, impugned actions are set aside and all the three petitions stands allowed.

26.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No