

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

CWP-21799-2013 (O&M)

Date of Decision: 27.09.2018.

Amanjit Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Karan Singla, Advocate,
for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab.

Mr. J.S. Puri, Advocate,
for respondent No.5.

JITENDRA CHAUHAN.J.(ORAL)

By filing this civil writ petition, under Article 226 of the Constitution of India, the petitioner *inter-alia* seeks quashing of order dated 28.06.2013 (Annexure P-14) passed by Collector, Amritsar vide which respondent No.5 was promoted to the post of Kanungo and the claim of the petitioner for promotion was rejected.

The petitioner had joined as Patwari in the Department of Revenue and Rehabilitation, Punjab on 27.07.1992. On 29.02.2008 the petitioner had met with an accident and suffered fracture of right hip and right shoulder, therefore, the petitioner became 40% permanently physically disabled vide Disability Certificate dated 12.09.2012 (Annexure P-4). It has been further contended that a refresher course is essential for being promoted to the post of

Kanungos. Respondent No.4-Principal, State Patwar School, Jalandhar, recommended the name of respondent No.5 for the fresher course vide letter dated 31.12.2012 (Annexure P-11) ignoring the claim of the petitioner.

It has been contended by the learned counsel for the petitioner that the petitioner had furnished his status of being handicapped on 16.04.2013, vide representation (Annexure P-13) through proper channel, prior to the passing of the impugned order dated 28.06.2013 (Annexure P-14).

On the other hand, the learned State counsel submits that respondent No.5 joined as Patwari in District Amritsar in the year 2002. He was issued a physically handicapped certificate by the Civil Surgeon, Amritsar on 17.07.1995 vide certificate No. 1170 (Annexure R-1). He was allowed to draw physically handicapped allowance, as per policy of the Government of Punjab, by the Director Land Record Punjab, Jalandhar vide his office order dated 08.09.2006 (Annexure R-2) The Punjab Government Social Security Women and Child Department issued a govt. circular on 23.09.2011 to the effect that 3% reservation be provided in promotion to all Punjab Govt. physically handicapped Employees in Group 'A' to 'D' vide circular dated 14.12.2011 the Punjab Government made roster point No. 10, 40 and 70 as reserve point for physically handicapped persons in promotion to Group 'C' and 'D'. The total sanctioned strength of Kanungo in

Amritsar District is 39 hence, there is only one post worked out to be filled by physically handicapped promotee. As per rule 8(b) of 1994 Rules, promotion to the post of Kanungo can only be made from amongst the Patwaries, who have minimum experience of 10 years in the District to which the posts relate and have undergone refresher course as specified in Appendix B of the Rules.

On receipt of Punjab Government letter dated 14.12.2011 (Annexure P-7) the refresher course, as provided under the Rules was conducted in the month of December, 2012. At that time there was only one post of Kanungo, which was to be filled by promotion from amongst physically handicapped Patwaries of this District. In the year 2012 only one Patwari i.e. respondent No.5 was available on records, who had more than ten years of service at his credit in District Amritsar and could have been deputed to undergo the required refresher course, therefore, his name was recommended to the Director Land Records, Punjab, Jalandhar for enlistment of his name for refresher course. The petitioner never intimated to the office of District Collector, Amritsar until 16.04.2013, regarding his disability, that is why, he was not deputed to undergo the requisite refresher course in the month of December, 2012. At the time of passing of order dated 28.06.2013 (Annexure P-14), it was only respondent No.5, who was available for consideration as he fulfilled the terms and conditions for promotion to the post of Kanungo and on the basis of his good

record, he was promoted as such from the quota of physically handicapped.

Learned counsel for respondent No.5 submits that admittedly, the disability certificate of the petitioner is of September 2012 whereas, the process of selection from disabled Patwaris was initiated and finalized much prior to this, although, formal orders were passed in December 2012. Therefore the entire case put forth by the petitioner is misconceived and misleading.

Heard.

This Court had passed the following order on 11.08.2017:-

“Learned State counsel is directed to complete instructions on the aspect as to whether while issuing order dated 31.12.2012 (Annexure P-11) and while deputing Patwaris for the Refreshers Course including private respondent No.5, any Circular/Notice had been issued inviting applications/options from the interested Patwaris including those falling under the handicapped category.”

In pursuance of order dated 11.08.2017, the following affidavit has been filed by District Revenue Officer, Amritsar:-

“In compliance with the directions passed by this Hon'ble High Court vide orders dated 11.08.2017, it is submitted that according to the provisions of Rule 8(3) of the Punjab Kanungos (Class III) Service Rules, 1994 and Appendix-B (Annexure P-10), names of senior most Patwaris are required to be recommended to undergo Refresher course before their promotion as Kanungo, on the requisition of respondent No.3 i.e. Director, Land Records Punjab,

Kapurthala road, Jalandhar and there is no provision/rule or public policy of issuing circular/notice thereby inviting any applications/options of interested Patwaries. Names are recommended exclusively and solely on the basis of seniority of Patwaries as per the seniority list, which contains the names of all the employees pertaining to all the categories including that of Handicapped category. It is further submitted that as per office records there were 6 (six) handicapped candidates Patwaries in District Amritsar, whose names were considered at the time of recommendation for Refresher course and respondent No.5 was found eligible and senior most amongst those 6 (six) Patwaries. At the relevant time of considering the names for Refresher course, respondent No.5 was sanctioned handicapped allowance by respondent No.3 i.e. Director Land Record vide order/letter No. L-2/5-53/111/127/17-19 dated 08.09.2006 and accordingly, name of total 8 (eight) Patwaries were recommended vide letter No. SK/NSK-1/3954 dated 31.12.2012. On the other hand, petitioner was appointed against general category quota as he was not a handicapped person at the time of joining of services. Petitioner had never informed/reported his employer/this office regarding his disability till 16.04.2013. Petitioner has claimed promotion as Kanungo through an application against handicapped quota, which application was received from the office of Tehsildar, Ajnala vide office endorsement No. OK/227 dated 16.04.2013 claiming his disability more than 40%. Prior to this, petitioner had never claimed/requested the office of deponent for the grant of handicapped allowance and nor he was given the same. In these circumstances, name of petitioner was not recommended for undergoing refresher course when the name of respondent No.5 was sent to the office of respondent No.3 i.e. Director Land Record. It is further necessary to state here that on the date of recommending the name of respondent No.5, he was the only senior most eligible Patwari in Handicapped category, as per the list of seniority.”

It is to be noticed that the promotion is to be made on

the basis of refresher course and only the candidate who has undergone

the necessary course can be in the zone of consideration for the post of Kanungo under Punjab Kanungo (Class-III) Service Rules, 1994. The factum of the disability incurred during the course of employment was conveyed to the employer on 16.04.2013 and prior thereto, the process for promotion in question had already commenced as is evident from Annexures R-5/4 and R-5/5. The petitioner on the date of consideration had not undergone the required refresher course, therefore, the present civil writ petition deserves to be dismissed.

Dismissed.

27.09.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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