

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

CWP No. 23713-2015

Date of decision : 18.07.2018

Pardeep Kumar

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. J.S. Maanipur, Advocate
for the petitioner.

Mr. Kiran Pal Singh, A.A.G. Haryana

RITU BAHRI, J. (Oral)

The petitioner joined the official respondents department on Class IV post on compassionate ground vide appointment letter dated 29.05.2006. The petitioner was considered as a Mali and was given the charge of Forest Guard independently from 12.05.2010 to 12.02.2015 and assigned the temporary duty for the different period, as is evident from order dated 03.05.2010 (Annexure P-3), On 16.04.2011, the petitioner while working as Forest Guard took the risk of his life while fighting with Animal Killers in order to save the animals and he was appreciated by the department. Thereafter, the Divisional Forest Officer, Yamuna Nagar recommended the case for regular promotion to the post of Forest Guard, vide order dated 05.04.2013, which was further forwarded by Conservator of Forests, North Circle, Haryana, Panchkula, vide letter dated 18.04.2013. His test was taken on 15.05.2013. Vide another communication dated

22.05.2013, DFO Yamuna Nagar recommended his immediate regular promotion. The Chief Conservator of Forests, Security-1, Haryana recommended the case for regular promotion to the post of Forest Guard to the Principal Chief Conservator of Forest, Haryana Panchkula-respondent No. 2 along with proposal by giving relaxation, vide letter dated 13.06.2013

The grievance of the petitioners before this Court is that respondent No. 5 to 8 who are juniors to the petitioner have been promoted vide order dated 14.10.2013.

On notice, a reply has been filed by the State stating therein that as per Haryana State Forest Executive Section (Group C) Service Rules, 1998, a peon cannot be promoted as Forest Guard and that the initial appointment of the petitioner was Peon, as per appointment letter dated 29.05.2006 and only mali with 5 years experience can be promoted as Forest Guard subject to condition he fulfills other requisite qualifications laid down under service Rules (R-1)

Learned counsel for the petitioner at the very outset states that the case of the petitioner is squarely covered with the judgment passed by this Court in a case of ***Parmod Kumar vs. State of Haryana and others, decided on 20.11.2017*** and against the said judgment, even ***LPA No. 638-2018*** has also been dismissed on 10.05.2018. The operative part in Parmod Kumar's case (supra) reads as under:-

“As already noticed by this Court in its order dated 19.09.2017, as per the settled law, at least two promotional avenues should be provided in any cadre to an employee. In my opinion, this would be a case which would be covered by the observations of the Supreme Court to the aforesaid effect in its judgment passed in ‘Dr.Ms.

O.Z.Hussain vs. Union of India and others', AIR 1990 SC 311,

wherein it was held as follows:

“7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why, while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate.”

Mr. Maanipur, learned counsel for the petitioner, further points to the order of regularization, Annexure P-5, wherein the petitioners' services have been regularized specifically in Group D w.e.f. 01.10.2003, in the pay scale of Rs. 2550-55-2660-EB-60-3200 plus usual allowances, as admissible under the rules.

Though Mr. Doon, learned counsel for the respondent State, has submitted that where there is no channel of promotion provided, the employee is rewarded otherwise in terms of the Assured Career Progression (ACP) Rules, by which, on account of non-promotion, he is given a higher pay scale, that contention is not found to

be sound by this Court, in view of the fact that the ACP Rules though of course otherwise provide a higher grade to a particular class of employees on account of non-promotion, are actually rules promulgated to offset stagnation due to non-promotion to those For Subsequent orders see LPA-638-2018 4 of 6 ::: Downloaded on - 19-07-2018 14:54:46 ::: CWP-27797-2013 5 employees who, despite having a channel of promotion, have not been promoted within a particular period due to lack of adequate number of vacancies on such higher posts at a particular point of time. Thus, if an employee has not been promoted for a period of 10 years, he is granted the first ACP scale, if not for 20 years then the second ACP scale, and so on. That does not imply that an employee in regular employment is not to be provided any channel of promotion at all, even if he possesses the qualifications required for higher posts in the cadre.

In the present case, it is not in dispute that the private respondents joined on 25.01.2008, 28.01.2008, 29.01.2008 and 29.01.2008 i.e after the petitioner joined and as per statutory Rule 9 (1) (c) of the Haryana Forest Department (Group D) Service Rules, 1998, Mali is the Feeder Post for promotional post of Peon, on which the petitioner is working. Since in the above writ petition, the Rules have been duly considered, the present petition is squarely covered by ***Parmod Kumar's case (supra)***

In view of the above factual position, this petition is allowed and a direction is given to the respondents to consider the case of the petitioner for promotion, if anybody junior to him has been promoted and if he fulfills other eligibility condition for the said post as per the statutory Rules. The said exercise shall be completed within a period of two months'

from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

18.07.2018
G Arora

Whether speaking/reasoned	Yes
Whether reportable	No