

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

COCF No. 582 of 2017

Date of Decision: 18.07.2019

Gulzar Singh

.....Petitioner

Versus

K.K. Talwar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Arvind Galav, Advocate
for the petitioner.

Mr. Pankaj Jain, Sr. Standing counsel UT Chandigarh
and Mr. Vikas Chatrath, Advocates
for the respondents.

AVNEESH JHINGAN, J.(oral)

This contempt petition has been filed pleading wilful disobedience of order dated 4.5.2016 passed in CWP No. 3287 of 2015.

The operational part of the order is reproduced below:

" It may be seen from Para 2 of the circular issued by the Government of India that even if a person acquires disability after entering into service, such employee is entitled to get the benefit of reservation as a person with disability "from the date he produces valid certificate of disability."

The last phrase of Para 2 of the Government of India circular, in our considered view, does not mean that the seniority of the persons with disability is required to be determined on the basis of the dates of disability. The seniority shall have to be determined in accordance with the rules/instructions or following the settled principle, namely, the continuous length of service on a post. The last line of Para 2 of the circular issued by the Government of India simply says that on producing the valid certificate of disability, a person with disability is entitled to jump the queue for his consideration for promotion against the post identified as suitable for appointment of persons with disability.

The direction issued by the Tribunal regarding preparation of roster is also with a view to facilitate the authorities to identify the posts which, are suitable for being manned by the persons with disability. It is for the authorities to identify such posts keeping in view the nature of duties and responsibilities attached to such posts. After identifying the suitable posts, the roster point for the purpose of giving effect to 3% reservation in 1995 Act can be formulated and an employee with disability as per his seniority in the cadre, then can be considered for promotion.

Learned Senior Counsel for the Administration submits that a clarification has been sought from the Government of India in this regard as the formulation of roster and/or identification exercise is likely to have impact on all India basis.

In this view of the matter, we direct the Government of India to issue the necessary clarification keeping in view the observations made hereinabove within three months. The needful as regard to the claim of the first respondent shall be done within a period of two months after the clarification is received."

The grievance raised by learned counsel for the petitioner is that for purpose of promotion 3% reservation has not been formulated and the case was not considered for promotion against the roster point available of persons with disability.

Learned counsel for the respondents states that a speaking order dated 4.11.2016 has been passed whereby the petitioner was considered for promotion as per the roster point but there were three persons senior to him in the category of 'persons with disability' as a result he was not promoted.

Learned counsel for respondents on instructions from Hardev Singh, Sr. Assistant, O/o Transport Department states that the roster point register for 3% reservation to 'persons with disability' is duly maintained. He

was sent for annual vetting. Copy of same is taken on record as Mark 'A'.

In view of above, learned counsel for the petitioner states that no cause of action survives for pursuing the contempt petition. However, he seeks liberty to raise grievance against the speaking order or the maintenance of the roster register.

Dismissed as infructuous with liberty as prayed for.

(AVNEESH JHINGAN)
JUDGE

18.07.2019
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Whether speaking/reasoned	Yes
Whether Reportable:	No