

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

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**CWP No.12328 of 2006
Reserved on 11.07.2019
Pronounced on:13.08.2019**

Kishori Lal Sandhu

.....Petitioner

Versus

The Chairman-Managing Director, National Fertilizers Ltd. and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE ARUN MONGA.

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

Mr. Vipin Mahajan, Advocate,
for the respondents.

ARUN MONGA, J.

This is the second round of litigation which the petitioner is undergoing before this Court in the same writ petition which was originally filed in the year 2006. Division Bench of this Court in an earlier round of litigation dismissed the writ petition on 10.08.2006. Thereafter, the petitioner preferred a review application also which too was dismissed on 19.01.2007. Aggrieved, the petitioner filed a SLP before the Apex Court which was allowed and converted into civil appeal Nos. 6405-6406 of 2009. The Supreme Court while allowing the appeals set aside the Division Bench orders dismissing the writ petition and the review application, respectively, and remanded the writ petition for fresh adjudication.

2. It would be apposite to reproduce the remand order, while setting aside the earlier order passed by the Division Bench of this Court which reads as under:-

“2. The appellant is an employee of the first respondent Company which is a Government of India undertaking. He was initially selected as trainee on 02.04.1995 and later absorbed as Technician Grade-III with effect from 02.04.1996 alongwith respondent No.4. From time to time, the appellant and the 4th respondent received promotions in their service. When it came to the question of the appointment of the appellant to the post of Senior Technician which appears to be a promotional post, the appellant was not promoted whereas the 4th respondent came to be promoted. The appellant belongs to a Scheduled Caste challenging the decision of the first respondent Company in not promoting the appellant to the post of Senior Technician, the appellant approached the High Court on the ground that the first respondent's Management is not relying the Roster System in the matter of promotion. Another grievance of the appellant before the High Court was that though the appellant had been promoted to the post of Technician Grade-I from Technician Grade II from 06.08.1998 and 4th respondent on 01.07.2000, the appellant's basic pay as on 01.01.2004 is less than that of the 4th respondent which according to the appellant is an anomaly.

3. By the impugned order dated 10.08.2006, the High Court dismissed the writ petition and subsequently by order dated 19.01.2007 dismissed the review petition. The High Court though noted the submission of the appellant regarding non-compliance with the Roster System in the matter of the promotion of the appellant did not record any categorical finding on that issue. On the other hand, it simply mentioned that the post in question (i.e. Senior Technician) is a merit post without any discretion. Coming to the question of disparity of the pay fixation between the appellant and 4th respondent, the High Court recorded as follows:-

“... In so far as the anomaly consequent upon wage revision w.e.f. 01.01.1997 is concerned it has been pointed out that S.M. Dhawan was earlier working in Production Department but was diversified to Chemical Control Wing on 19.05.1999. Earlier to that S.M. Dhawan was promoted as Operator Grade-II w.e.f. 20.12.1997 raising his pay to Rs. 5150/- in the scale of Rs. 5150-150-8000. On that day the petitioner was Technical Grade-III (Lab.) and was drawing Rs. 4750/- in the scale on account of his promotion on 20.02.1997. On the date of diversification to Chemical Control Wing on 19.05.1999, S.M. Dhawan was drawing Rs. 5600/- in the said scale whereas the petitioner was drawing Rs. 5550/- in the scale of Rs. 5550-160-8190. S.M. Dhawan was also drawing higher pay even in the pre-promoted scale. On this account there was found to be no anomaly in the pay of the petitioner/pay fixation as had been claimed.”

4. A conclusion rather difficult to understand. In the circumstances, we deem it appropriate to set aside both the impugned orders and remit the matter to the High Court for disposal in accordance with law. Ordered accordingly. The appeals are accordingly allowed.”

3. Grievance of the petitioner relates to promotion to the cadre of Senior Technician under National Fertilizers Limited (hereinafter referred to be 'NFL')/respondent No.1 vis-a-vis one Sh. Surjit Singh who was promoted as against the claim of the petitioner. Petitioner is also aggrieved that he is not being adjusted against the roster point meant for scheduled castes category in the matter of promotion.

4. Brief factual matrix leading to the filing of the writ petition is that after having been initially selected as a Trainee on 02.04.1995 along

with one Sh. Surjit Singh who was also selected on the same day, the petitioner and Surjit Singh-respondent No.4 both of them were absorbed as Technician Grade-III w.e.f. 06.02.1996. Later both of them were promoted as Technician Grade-II and Grade-I w.e.f. 06.08.1997 and 06.08.1998, respectively, after successful completion of one year service as Technician Grade-II.

5. However, for the next promotion on the post of Sr. Technician while respondent No.4 and another colleague of the petitioner i.e. Vipin Kumar were granted promotion, the claim of the petitioner was not considered, notwithstanding that he is senior to respondent No. 4.

6. In the premise, the petitioner submitted his representation to the respondent-NFL which was not adverted, compelling him to approach this Court prior to filing of the present writ petition. Pursuant to the directions passed by this Court in the earlier writ petition, a speaking order dated 24.01.2006 (Annexure P-7), impugned herein was passed, whereby claim of the petitioner was declined. Another order dated 26.04.2005 (Annexure P7/A) has also been assailed herein by the petitioner vide which his claim for step up/refixation of his pay on parity with another colleague i.e. Surinder Mohan Dhawan was also not accepted stating that pay anomaly contended by the petitioner is not covered under the extant rules applicable in the case.

7. In the return filed by the respondent-NFL, the claim of the petitioner has been resisted on the ground that the same is wholly misconceived as neither the petitioner is senior to his colleagues as contended by him nor even otherwise entitled to the roster point and the detailed reason thereof as has been stated in the preliminary objections of Para 2 A

to J and the para wise reply on merits. As regards his claim of rectification of the pay anomaly, the same has also been resisted on the ground that said Surinder Mohan Dhawan was drawing more basic pay than the petitioner in his pre promoted scale and therefore was entitled to pay protection and the said benefit was not admissible to the petitioner, as more elaborately stated in preliminary objection No. 3 of the written statement.

8. I have heard learned counsel for the parties and have gone through the rival pleadings filed by the parties herein.

9. The relief sought by the petitioner herein is threefold vis-a-vis:-
(A) Promotion as Senior Technician w.e.f. 01.02.2002 i.e. from the date, his junior Surjit Singh respondent No. 4 was promoted.
(B) Re-fixation of his basic pay by removing anomaly viz a viz Surinder Mohan Dhawan.
(C) Quashing of two orders both dated 24.01.2006 passed by respondent-NFL (Annexures P7-P7/A), respectively.

10. My discussion herein after is seriatim A to C as per the relief sought by the petitioner.

10.1 **A) Promotion as Sr. Technician**

The service particulars of petitioner as compared to respondent No.4 is as under:-

Post	Petitioner	Respondent No.4/Surjit Singh
Apprenticeship trainee	06.02.1995	06.02.1995
Technician Grade-III	02.04.1996	02.04.1996
Technician Grade-II (P-1)	06.08.1997	06.08.1997

Technician Grade-I (P-2)	06.08.1998	06.08.1998
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10.2. Subsequent to his promotion as Senior Technician (Lab) w.e.f 01.01.2004, petitioner has been placed in higher pay scale as Sr. Technician (Lab) SG (02.01.2009) and thereafter promoted in Executive cadre as Sr. Chemist (Lab) (24.06.2013) & promoted as Asstt. Manager (Lab) (01.08.2015).'

10.3 After successful completion of one year apprenticeship training, both petitioner and respondent No.4 were appointed as Technician Grade-III. Selection committee in its proceedings held on 01.03.1996, declared Surjit Singh-respondent No.4 senior to the petitioner. It was thereafter that in the seniority Annexure R-3(Colly) list of Technicians Grade-III (circulated on 11.01.1997), Technicians Grade-II (circulated on 21.07.1998) and Technician Grade-I (circulated on 02.08.2001), respondent No.4-Surjit Singh was shown senior to the petitioner. The aforesaid seniority lists, either prior to or even after filing of the writ petition was never challenged by the petitioner and accordingly it would be safe to assume that the said seniority list has since attained finality qua petitioner and respondent No.4.

10.4 In the premise, I am of the opinion that contention of the petitioner that respondent No.4 is junior to him is wrong and is legally unsustainable as he never objected to the recasting of the seniority as per the recommendations of the Selection Committee and even if it is presumed that he objected to the same, he never challenged the rejection. Having acquiesce in the same the petitioner cannot turn around and now claim the benefit of being senior to respondent No.4. Assuming for the sake of

arguments, if it is to be accepted, as contended by the petitioner that respondent No.4 has been wrongly made senior to him, then the rule of delay and laches would come in the way of such a claim of the petitioner.

10.5 As regards the claim for alleged denial of benefit of the roster point qua scheduled caste category to the petitioner, the same is also not justified. The petitioner seems to be under mis-conception based on incorrect understanding of the factual context in the present case. As per petitioner, one Mit Singh belonging to scheduled caste category retired on 31.12.2001 from the post of Senior Technician (reserved post), and therefore, the petitioner ought to have been promoted against the said reserved post against his retirement. Mit Singh had been promoted as Senior Technician on 07.07.1983 against reserved category roster point No. 8 on the principles enunciated by the Apex Court in '*R.K. Sabharwal and others Vs. State of Punjab and others, 1995 (2) SCC 745*', vide which the said roster point No.8 became a post based roster i.e. replacement roster. In other words, prior to R.K. Sabharwal's case (*supra*), the roster point No.8 was vacancy based roster i.e. 'running roster' and not a 'replacement roster'. Government of India, pursuant to judgment in *R.K. Sabharwal's case (supra)*, vide office memorandum dated 02.07.1997 (Annexure R-4) clarified the position in detail, as to how a roster is to be initially operative and as to how the existing incumbents of the posts are to be slotted in the roster. The relevant portion of the said office memorandum (explanatory roster) is reproduced as order:-

“EXPLANATORY NOTES:-

Principles for making and operating post based rosters.

1 to 9 XXX

XXX

XXX

9. The roster is to be operated on the principle of replacement and not as a “running account” as hitherto. In other words, the points, at which reservation for different categories applies, are fixed as per the roster and vacancies caused by retirement etc. of person occupying those points shall be filled by appointment of persons of the respective categories.

INITIAL OPERATION:-

1. At the point of initial operation of the roster, it will be necessary to determine the actual representation of the incumbents belonging to different categories in a cadre vis-a-vis the points earmarked for each category viz. SC/ST/OBC and General in the roster. This may be done by plotting starting with the earliest appointee. Thus, if the earlier appointee in the cadre happens to be a candidate belonging to the Scheduled Castes, against point No.1 of the roster, the remark “utilized by SC” shall be entered. If the next appointee is a general category candidate, the remarks “utilized by general category” shall be made against point No.2 and so on and so forth till all appointments are adjusted in the respective rosters. In making these adjustments, SC/ST/OBC candidates on merit, in direct recruitment, shall be treated as general category candidates.”

10.6 Applying the above rule of the Government of India for implementation of 'posts based roster' w.e.f. 02.07.1997, Mit Singh was slotted at roster point No.1 (unreserved post) being the senior most/earliest appointee working in the cadre at the relevant time, reflected from the roster

prepared by respondent-NFL which was effective from 02.07.1997.

10.7 Reference may be had in this connection to the Constitution Bench judgment rendered by the Supreme Court in the case titled as *R.K. Sabharwal's case (supra)*. The relevant principles enunciated therein are reproduced herein below:-

“5. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State Services. When the State Government after doing the necessary exercise makes the

reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/ Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed. Despite any number of appointment/promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.

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7.The expressions "posts" and "vacancies", often used in the executive instructions providing for reservations, are rather problematical. The word "post" means an appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office.

The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre - strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation.

8. When all the roster-points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Casts/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Jeevan Reddy, J. speaking for the majority in *Indra Sawhney vs. Union of India* (AIR 1993 SC 477) observed as under:-

"Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes Scheduled Castes and other Backward Classes is 50% which means that out Of the 1000 posts 500 must be held by the members of these classes i.e- 270 by Other Backward Classes, 150 by Scheduled Casts and 80 by Scheduled Tribes. At a given point of time, let us say the number of members of OBC in the unit/service/category is only 50, a shortfall of 220. Similarly the number of members of scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If

the entire service/cadre is taken as unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all backward classes reaches 500 i.e., till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be.”

10.8 In the premise, when Mit Singh retired on 31.12.2001 and vacated the roster point No.1 (unreserved) of the 'posts based roster', the same was, therefore, to be replaced by an unreserved candidate. The petitioner's claim to be promoted against the slot vacated by Mit Singh has been thus rightly rejected. Another aspect that deserves to be noticed is the amended promotion policy (Annexure R-1) dated 15.12.2000 clause 3 whereof envisages that it had been decided to make selection to the post of Senior Technician purely on merit basis through personal interview (i.e. 100% merit basis). The said policy is not under challenge by the petitioner

in the present writ proceedings and is therefore, essentially to be applied across the board to all the employees of the respondent-NFL including the petitioner. As on 31.12.2001, there were two vacancies for being filled up by selection purely on merit in the cadre of senior technician. For filling up these two vacancies, the NFL issued letter dated 28.01.2002 (Annexure P-3) inviting the eligible candidates for interview . Accordingly, three candidates i.e. petitioner, respondent No.4 and one Vipin Kumar were interviewed by the DPC on 29.01.2002. After making an over all assessment of all the candidates based, inter alia, on service particulars, Annual Confidential Reports and performance during the interview, the Departmental Promotional Committee selected and recommended only two candidates i.e. Vipin Kumar and Surjit Singh-respondent No.4 for appointment to the post of senior technician. Neither any illegality has been alleged in this procedure adopted by the respondent-NFL for selection for alleged appointment to the post of Senior Technician on 100% merit nor even otherwise, I have found any illegality therein. Therefore, there is no ground made out for interference in the selection and appointment of Vipin Kumar and respondent No.4 as Senior Technician purely on merits.

11. (B) Refixation of basic pay.

The parity by refixation of pay sought by the petitioner with Surinder Mohan Dhawan also seems to be mis-conceived. Said Surinder Mohan Dhawan was working in Production Department and was later deputed to Chemical Control Wing on 19.05.1999. Before his diversification, he was promoted as Operator Grade-II on 20.02.1997. On such promotion his pay was raised from Rs.5,150/- in the scale 5,150-150-8,000. As on the date of promotion of said Surinder Mohan Dhawan, the

petitioner was in lower pay scale of Rs.4,650-100-6,550 and was drawing pay of Rs.4,750/- while working as Technician Gr.III. Thus, while working in Chemical Control Department, Surinder Mohan Dhawan was drawing higher pay of Rs. 5,600/- as against the petitioner who was drawing Rs.5,550/- The pay of Surinder Mohan Dhawan was required to be protected on his diversification in his existing pay scale. Accordingly, I am of the opinion that there was no anomaly of pay between the petitioner and the said Surinder Mohan Dhawan as already explained hereinabove.

12. (C) Quashing of orders dated 24.01.2006 passed by respondent-NFL.

The petitioner before approaching this Court had got a legal notice served raising similar pleas and the Competent Authority in compliance of order dated 18.11.2005 passed by a Division Bench of this Court considered the claim in legal notice and rejected the same by passing a speaking order dated 24.01.2006 (Annexure P-7). For the reasons recorded above, I find no reason for interfering in the same.

13. In view of detailed discussion hereinabove and the reasons contained therein, the prayer of the petitioner to quash the orders Annexures P7 and P7/A, both dated 24.01.2006, is rejected.

14. Writ petition is, therefore, dismissed with no order as to costs.

(ARUN MONGA)
JUDGE

13.08.2019
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| 1. | Whether reportable? | Yes / No |
| 2. | Whether reasoned / speaking? | Yes / No |