

**Sr. No. 236
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.11660 of 2016 (O&M)

Date of Decision: 08.03.2019

Suresh Kumar Malik

... Petitioner

Versus

Punjab National Bank and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Rohit Ahuja, Advocate,
for the petitioner.

Mr. Sameer S. Tiwari, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

Present petition has been filed, *inter alia*, for issuance of a writ in the nature of mandamus directing the respondent-Punjab National Bank to grant promotion to the petitioner to the post of MMG Scale-II, from the date of clearing the written examination for promotion and consequently, post him to any of the 10 stations, the options for which were sought from the petitioner or to post him in circle of neighbouring States of Punjab, Haryana or Himachal Pradesh.

2. The lead argument of learned counsel for the petitioner is that the petitioner upon his promotion has not been given posting as per the options given by him which is in violation of Punjab National Bank guidelines dated 04.04.2015 (Annexure P-4), for placement of MMG Scale II and III promotees. It would be instructive to reproduce the relevant part of the said guidelines:-

Sr · N o.	Particulars	JMG-I to MMG-II	MMG-II to MMG-III
1.	XX		
2.	Allocation of Candidates from Multi Circle States (excluding covered under 1 above)	Normal/Seniority Channel: Candidates will be allocated in parent Circles to the extent of availability of vacancies. The remaining candidates, if any, will be allocated to neighboring Circles/other Circles in the same State/other States.	Normal/Seniority Channel: Candidates will be allocated in neighboring Circles/other Circles in the same State/other State.
3 & 4	XXX		
5.	Exercise of Option for allocation	All the candidates approved for promotion to MMG Scale II and III will be advised to give options for10 Circles/ZAOs, in line with the placement guidelines, in order of preference, for allocation. However allocation will be made as per the order of preference given by the candidates, strictly in order of their merit. In case, no option is exercised by any candidate or non-availability of vacancy in the Circles (S)/ZAO opted for, they will be allocated as per Bank's requirement. The option exercised by any candidate which is not in line with the placement guidelines shall not be considered.	

3. Succinctly, the factual matrix of the case is that vide Circular dated 31.03.2015 (Annexure P-1), respondent-Bank invited online applications from its officers who fulfil the eligibility criteria for promotion to the post of MMG Scale II and MMG Scale III under Normal/Seniority Channel, Merit/Fast Track Channel and Merit Channel.

4. Accordingly, the petitioner also applied for the same and successfully qualified the online test conducted on 10.05.2015. Subsequent thereto, respondent-Bank issued a list of successful candidates, wherein the petitioner was shown at Sr. No.801.

Thereafter, the petitioner, as per the guidelines for placement,

ibid, gave following 10 options of Circles:-

a) Jalandhar, b) Kapurthala, c) Hoshiarpur, d) Ludhiana, e) Chandigarh, f) Amritsar, g) Patiala, h) Kurukshetra, i) Karnal, (j) Delhi.

5. However, instead of any of the above options, the petitioner was posted to Vijaywada (Andhra Pradesh).

6. Petitioner was also issued promotion order dated 28.05.2015 (Annexure P-7), by respondent No.3, vide which he was informed that he has been approved for promotion to the post of MMG Scale-II under merit/fast track channel. In the said promotion order, he was informed that fitment in the higher scale and release of perks are subject to his accepting the promotion and taking up new assignment on 01.06.2015. It was also mentioned in the promotion order that petitioner has to send his unconditional acceptance on the enclosed proforma through proper channel on or before 29.05.2015.

7. On one hand, petitioner was happy that he has been promoted to the post of MMG Scale-II, but on the other hand, he was shocked to know his new place of posting i.e. Vijaywada (Andhra Pradesh), which is about 1 ½ days journey by train from Jalandhar.

8. Feeling aggrieved by his posting at Vijaywada, the petitioner submitted an appeal dated 28.05.2015 (Annexure P-8), before respondent No.2-Deputy General Manager, showing his inability to join at Vijaywada due to his health problems and ailment of his aged parents.

9. It was, *inter alia*, contended in the appeal that petitioner's parents, aged 83 years (father) and 81 years (mother), are living with him and his father had undergone two surgeries of Hip replacement and his mother had undergone three surgeries i.e. both knees replacement and fixation of plates in lower portion of legs. Both parents need support to walk. Petitioner had further stated in the appeal that he himself is a patient of allergic Bronchitis and Rhinitis and has to use inhaler and nebulizer, Rotacaps and intra-venous injections regularly.

10. The said appeal was not adverted to by respondent No.3. Petitioner, thereafter, submitted a representation dated 06.07.2015 (Annexure P-9), to respondents No.1 and 2 stating, *inter alia*, that he has been discriminated as his juniors, on being given promotion have been kept either in the same Circle or allocated the neighbouring Circle. The said representation was also overlooked and the petitioner caused a legal notice dated 29.07.2015 (Annexure P-10), but no response either to his appeal or representation or legal notice was given by the respondents, leading to filing of a writ petition before this Court which was disposed of vide order dated 21.12.2015 (Annexure P-11), with a direction to the respondents to pass a speaking order.

11. Pursuant thereto, respondent No.2 passed the impugned speaking order dated 01.02.2016 (Annexure P-13), in response to the legal notice, whereby the claim of the petitioner to be posted as per any of the 10 options given by him, was declined.

Hence, the present writ petition.

12. In the reply filed by the respondents, a stand has been taken that the case of the petitioner has been dealt strictly as per his merit and as reflected from Annexure R-4, wherein, details of vacancies in the Circles opted by the petitioner vis-a-vis serial number of last candidate have been given. The relevant part whereof is extracted hereinbelow:-

Option No.	Circle Opted	Total number of vacancies in the circle	Serial number of last candidate allocated the circle	Remarks
1	Jalandhar	21	147	
2.	Kapurthala	28	514	
3.	Hoshiarpur	14	916	Special Category (Physical Handicapped)
4.	Ludhiana	37	619	
5	Chandigarh	24	98	
6.	Patiala	22	728	
7.	Kurukshetra	28	331	
8.	Amritsar	16	423	
9.	Karnal	19	954	Special Category (Having Mentally Retarded child)
10	Delhi Incl. Head Office	87	800	

13. I have gone through the pleadings and have heard the rival contentions of the learned counsel for respective parties. I am of the view that there is no illegality committed by the respondent-Bank while considering the request of the petitioner.

14. It is not in dispute that the petitioner had applied for promotion under Fast Track/merit channel. As per the reply filed, the posting under this channel was done on merits. It is the specific stand of the respondents that the posting of the petitioner was done on the basis of merit position No.801 and as per

placement guidelines dated 23.04.2015 (Annexure P-5) and the petitioner was not eligible for allocation/posting to his parent circle as persons above him in merit list had already opted for all 10 stations of which the petitioner had given choice. The only two exceptions being persons at merit position No.916 and 954 who were from special category being cases of physically handicapped and having handicapped child, respectively.

15. A perusal of the reply thus makes it evident that the vacancies available in nine other circles, of which the option was given by the petitioner, were exhausted, after allocating the candidates above the petitioner in the merit. The petitioner was allocated posting in Andhra Pradesh considering his merit and as per the requirements of bank. It has not been shown as to how the petitioner has been discriminated.

16. It has been fairly conceded by the respondents that the persons below in the merit list were given the posting of their choice as their case fell within the exceptional clause of the guidelines since they were having differently abled children. Accordingly, there is no scope for this Court to interfere with the decision of the respondents under Article 226 of the Constitution of India.

17. However, in the parting, I would like to note that in the given peculiar circumstances of the case, where the petitioner has been serving the bank since 1982 and must be at the fag end of his service career, it is harsh on the petitioner and his family to be re-located from Jalandhar to Vijaywada, especially when it has not

been controverted that petitioner suffers from ill health and that he has aged parents who have undergone major surgeries, as mentioned above.

18. In this view of the matter, it is expected from the respondents to take a sympathetic view on the request of the petitioner and re-consider his case, for his posting in the circle of neighbouring State(s).

19. With these observations, petition is disposed of.

08.03.2019

vandana

Whether speaking/reasoned

Whether Reportable

(ARUN MONGA)
JUDGE

Yes/No

Yes/No