

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

CWP-22964-2012 (O&M)
Reserved on : 22.03.2018
Date of decision : 24.01.2019

Gurnishan Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Anupam Gupta, Sr. Advocate,
Ms. Harmanjeet Kaur, Advocate,
for the petitioner.

Ms. Sudeepti Sharma, Addl.A.G., Punjab.

Ms. Alka Chatrath, Advocate,
with Ms. Stuti Monga, Advocate,
for respondent No.8.

JITENDRA CHAUHAN, J.

Prayer in the instant petition filed under Articles 226/227 of the Constitution of India, *inter alia*, is for issuance of a writ of Certiorari quashing inter se joint seniority list of Handicapped Senior Industrial Promotion Officers and Block Level Extension Officers dated 12.12.2011 (Annexure P-6) Advice letter dated 24.02.2012 (Annexure P-7) and order of promotion of respondent No.8 dated 18.04.2012 (Annexure P-8).

It is the case of the petitioner that he was appointed as Block Level Extension Officer (Industries) in the Department of Industries, Punjab against the post reserved for handicapped persons (Blind category) vide

appointment letter dated 18.06.2001 (Annexure P-1). He has been working as such since his appointment and has clean service record with outstanding/very good reports. The petitioner's turn for consideration for promotion to the next higher post of Assistant Director/Functional Manager against the reserve point No.11 for Block Level Extension Officer Handicapped (Blind/partially blind category) became due in the year 2011. Therefore, the petitioner made a representation dated 27.07.2011 (Annexure P-2) that the petitioner being visually/partially blind handicapped Block Level Extension Officer was eligible for promotion to the post of Assistant Director/Functional Manager against one per cent quota reserved for handicapped (blind/partially blind) employees and that the petitioner's name be considered against one vacancy falling thereunder. The DPC meeting was held on 10.08.2011 (Annexure P-3) but one post of Assistant Director/Functional Manager reserved for handicapped (blind/partially blind) employees was kept vacant for giving promotion against it to the eligible employees. Thereafter, for filling up the vacant post of Assistant Director/Functional Manager by promotion from amongst handicapped (blind/partially blind) employees, the respondents prepared agenda for the DPC meeting which was held subsequently on 23.11.2011 (Annexure P-5), wherein, the justification for filling up one post reserved for this category of employees from the cadre of Block Level Extension Officer (for short, 'the BLEO') was given on the basis that 25% quota for promotion from amongst BLEO was greater than 17% quota for promotion from the cadre of Senior Industrial Promotion Officer (for short, 'the SIPO'). In the agenda, the panel for promotion from amongst BLEOs, the name of the petitioner in the panel

of BLEOs was at serial No.1, whereas, respondent No.8 was placed in the panel of SIPOs below that of BLEOs. However, in the meeting held on 23.11.2011, there was a conflict of views between the Industries Department and the Social Welfare Department. While Industries Department held the view that the promotional post reserved for handicapped employees (Blind/partially blind) should go to the senior most employee in the joint seniority of the cadres of BLEO, SIPO, Superintendent Grade-II and Statistical Assistant, the Social Welfare Department was of the view that point No.11 reserved for handicapped (blind/partially blind) fell within 15 posts of Functional Manager belonging to the quota of BLEO and therefore, only the blind/partially blind BLEO be considered for promotion to the post of Functional Manager. The Industries Department, on the basis of Seniority-cum-Merit recommended the name of respondent No.8 for promotion from the post of SIPO to Functional Manager. The DPC could not arrive at a final decision and representative of the Social Welfare Department recorded a dissenting note in the proceedings of the DPC meeting (Annexure P-5). After the DPC meeting dated 23.11.2011, the Industries Department prepared a joint inter se Seniority List of SIPOs and BLEOs dated 12.12.2011 (Annexure P-6), therein reflecting respondent No.8 (SIPO) senior to the petitioner (BLEO). That without placing the joint seniority list of BLEOs and SIPOs and the advice of the Social Security Women and Child Development Department dated 24.02.2012 (Annexure P-7), before the DPC, the official respondents granted promotion to respondent No.8 as Functional Manager against the reservation for handicapped employees subject to certain conditions

including the conditions that the promotion order shall be subject to review on any Court order and also on the discovery of any additional fact, by order dated 18.04.2012 (Annexure P-8).

Feeling aggrieved, the petitioner served legal notice of demand of justice upon the official respondents dated 14.06.2012 (Annexure P-9), which has not been replied to. The respondents maintained separate seniority list of the BLEOs and SIPOs and to this effect the respondents duly issued separate tentative seniority lists for these two cadres on 21.09.2012 (Annexures P-10 and P-11, respectively).

It is contended that the petitioner's promotion to the next higher post of Assistant Director/Functional Manager is governed by the Punjab Industries Non-Technical (Group-B) Service Rules, 2007 (Annexure P-12) supplemented by executive instructions dated 05.07.2011, 23.09.2011 and 14.12.2011 (Annexures P-13, P-14 and P-15, respectively). The benefit of reservation extended to respondent No.8 who belongs to the cadre of SIPOs, has been wrongly granted as the cadres of BLEOs and SIPOs are separate and distinct. Both the cadres could not be amalgamated and the action of the respondents in preparing a joint inter se seniority for the purpose of considering to the post of Assistant Director/Functional Manager reserved for blind/partial blind categories is in violation of the rules. The reservation of 1% promotional post for visually/partially blind category of handicapped employees was introduced for the first time w.e.f. 06.03.2011 and under the scheme of reservation in the rules, it falls to the bigger percentage (25%) for the first cadre of BLEO to which the petitioner belongs, and not to smaller percentage (17%) for the next cadre of SIPO to which respondent No.8

belongs. It is submitted that by applying the proportion of 25:17:7:1 of the feeder cadres of BLEOs : SIPOs : Superintendents Grade-II : Statistical Assistants to the ratio of 50% for promotion, their share in one post reserved for visually/partially blind handicapped person comes to $1/2:1/3:1/7:1/42$, the reserved post falls to the greater i.e. $\frac{1}{2}$ share of BLEOs, therefore, the promotion of respondent No.8 has been wrongly done. It is further contended that without placing the joint seniority list of the BLEOs and SIPOs and the advice of the Department of Social Security for Women and Child Development before the DPC for its concluded recommendations, the official respondents granted promotion to respondent No.8 as Functional Manager against the reservation for handicapped employees.

On the other hand, learned State counsel submits that the inter se joint seniority list of handicapped SIPOs and BLEOs dated 12.12.2011 was prepared by the Department. As per the advice of the Department of Social Security for Women and Child Development (Annexure P-7), the person who is senior in the inter se seniority list was to be promoted as Functional Manager while giving 3% reservation in promotion to the handicapped. Therefore, respondent No.8 has been rightly promoted.

Learned counsel for respondent No.8 submits that as the post in question of SIPO and BLEO belongs to the Feeder Cadre was to be filled from amongst the handicapped persons are to be promoted, therefore, there is no alternative except to make promotion from the eligible persons on the basis of joint seniority of eligible persons.

Heard.

It is to be noticed that promotion to the post of Assistant

Director/Functional Manager has to be made from amongst the eligible BLEOs, SIPOs, Superintendents Grade-II and Statistical Assistants against the 50% promotion quota. Relevant extract of Appendix 'B' to Rule 5 of the Punjab Industries Non-Technical (Group-B) Service Rules, 2007, reads as under:-

Sr. No.	Designation of the post	Percentage for appointment by-		Method of appointment, Qualifications and Experience for appointment by-	
		Promotion	Direct Appointment	Promotion	Direct Appointment
1	Assistant Director/ Assistant Controller of Stores/ Assistant Director (Data)/ Research Officer/ Store Inspection Officer/ Funactional Manager	Fifty per cent	Fifty per cent	Fifty per cent posts by promotion shall be filled as under:- (a) Twenty-five per cent from amongst the Block Level Extension Officers, working under the control of the Director, who are graduates from a recognized university or institution and have experience of working as such for a minimum period of eight years; (b) Seventeen per cent from amongst the Senior Industrial Promotion Officers, working under the control of the Director, who are graduates from a recognised university or institution and who possess a diploma in any discipline of Engineering from a recognised university or institution and have an experience of working as such for a minimum period of eight years; (c) xxxx (d) xxxx	XXX

Out of said 50% promotion quota, 3% reservation is granted to the physically handicapped in terms of the instructions issued by the Department of Social Security, Women and Child Development. Under this 3% quota for physically handicapped candidates, 1% posts are reserved for

the blind/partially blind. A meeting of the DPC was held on 10.08.2011, wherein, one post was kept vacant to be filled up from amongst the Handicapped for want of clear instructions in this regard. Thereafter, a DPC meeting was held on 23.11.2011, wherein, Additional Secretary, Industries and Commerce-cum-Director, Industries and Commerce opined that the Blind/partially blind candidate who is senior in the consolidated merit list be considered for promotion as Functional Manager. However, the nominee of Welfare Department opined that as roster point No.11 is reserved for the blind/partially blind persons in the 15 posts to be filled from amongst the BLEOs, the candidate from cadre of BLEOs who is blind/partially blind should be considered for promotion. Thereafter, advice was sought from the Department of Social Security for Women and Child Development (Handicapped Persons Welfare Branch) which vide Annexure P-7 opined that while giving 3 per cent reservation in promotion to the handicapped officer this department's instructions may be kept in view and whosoever physically handicapped officer is senior according to the final joint seniority list is required to be promoted as Functional Manager. Thus, the contention of learned Sr. counsel that the advice of the Department of Social Secretary for Woman and Child Development (Handicapped Persons Welfare Branch) cannot be acted upon as the DPC had been convened much prior thereto is also misplaced.

For the purpose of determining the inter se seniority, reference can be made to Rule 8 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, relevant portion whereof, reads thus:-

“8. Seniority.-The seniority inter se of persons

appointed to posts in each cadre of a Service shall be determined by the length of continuous service on such post in that cadre of the Service :

Provided that in case of persons recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the Commission or the Board, as the case may be, shall not be disturbed :

Provided further that in case a person is permitted to join the post after the expiry of the said period of four months in consultation with the Commission of the Board, as the case may be, his seniority shall be determined from the date he joins the post :

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso joins, the person so referred shall be placed below all the persons of the next selection who join within the time specified in the first proviso:

Provided further that in the case of two or more persons appointed on the same date, their seniority shall be determined as follows:-

- (a) a person appointed by direct appointment shall be senior to a person appointed otherwise :*
- (b) a person appointed by promotion shall be senior to a person appointed by transfer ;*
- (c) in the case of persons appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in the appointments from which they were promoted or transferred ; and*

(d) in the case of persons appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment ; and if the rates of pay drawn are also the same, then by their length of service in these appointments and if the length of service is also the same, an older person shall be senior to a younger person.

Note.-Seniority of persons appointed on purely provisional basis or on ad hoc basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment.”

A perusal of the above rules clearly shows that while deciding the inter se seniority of the persons appointed to the post in different cadres, seniority shall be determined from the date of joining to the said post. A perusal of the Joint (inter se) Seniority list of handicapped Senior Industrial Promotion Officers and Block Level Extension Officers working in the department of Industries & Commerce (Annexure P-6), respondent No.8-Sukhpal Singh's date of joining is 27.06.2001 with seniority number 149 in his own cadre, whereas, petitioner joined on 17.07.2001 with seniority number 175 in his own cadre. Vide order dated 04.12.2017, this Court directed learned State counsel to produce the original DPC proceedings in pursuance whereof, respondent No.8 was promoted to the post of Functional Manager. This Court has perused the record of the DPC and finds that respondent No.8 is senior to the petitioner in every respect. Accordingly, vide impugned order (Annexure P-8), respondent No.8 was given

promotion. Moreover, on view of the admitted position that respondent No.8 being senior to the petitioner, the non-submission of the inter se joint seniority list dated 12.12.2011 (Annexure P-6) to the DPC is of no consequence, particularly, when respondent No.8 was found to be within the zone of consideration and was considered for promotion.

There is no dispute with regard to the fact that the cadres of BLEOs and SIPOs are separate. Thus, the officials though have independent seniority in their respective cadre under the rules but a combined/common seniority of these two otherwise separate cadres was prepared and considered only for the purpose of promotion to the higher post of Assistant Director/Functional Manager reserved for blind/partially blind employees. The cadres were combined only for the specific purpose of preparing a joint seniority list for promotion to handicapped quota. No fault can be found with the approach of the respondents in acting on the advice of the Department of Social Security, Women and Child Development Punjab (Handicapped Persons' Branch) whose primary duty is to ensure that necessary benefit is passed on to the disadvantageous sections of the society including the petitioner and respondent No.8. The Court feels that the post of Functional Manager reserved for the category of handicapped persons has rightly been filled up by promotion in favour of respondent No.8. Learned Senior counsel has failed to refer to any material to doubt the intention of the respondents. The Court also feels that in case, reservation is applied in the manner projected by the petitioner, in that eventuality necessary advantage will not reach to all the desired beneficiaries.

In view of the above, finding no merit in the instant petition,
the same is hereby dismissed.

24.01.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No