

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1.)

CWP-24170-2014 (O&M)
Date of Decision:-25.02.2019.

O.P. Verma

....Petitioner

Versus

Uttari Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

(2.)

CWP-25133-2014 (O&M)

Mahabir Singh Goyat

....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

(3.)

CWP-24173-2014 (O&M)

Hansraj

....Petitioner

Versus

Uttari Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

(4.)

CWP-25313-2014 (O&M)

Radhey Shyam

....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

(5.)

CWP-26426-2014 (O&M)

I.D. Jindal

....Petitioner

Versus

Haryana Power Generation Corporation Ltd. and another

...Respondents

(6.)

CWP-27626-2013 (O&M)

Katar Singh Dabas

....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam through its Managing Director and
another

...Respondents

(7.)

CWP-27638-2013 (O&M)

Sube Singh Grewal

....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam through its Managing Director and
another

...Respondents

(8.)

CWP-27735-2013 (O&M)

Piare Lal

....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam through its Managing Director and
another

...Respondents

(9.)

CWP-1153-2015 (O&M)

Mange Ram Gupta

....Petitioner

Versus

Haryana Vidvut Parsaran Nigam Ltd. through its Managing Director and
others

...Respondents

(10.)

CWP-24167-2014 (O&M)

Prem Chand

....Petitioner

Versus

Uttari Haryana Bijli Vitran Nigam Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.K. Goel, Advocate and
Mr. Shvetanshu Goel, Advocate for the petitioner(s).

Mr. Alankrit Bhardwaj, Advocate for
respondent Nos.1 to 3 in CWP-25133-2014.

Ms. Bhanvi Sood, Advocate for
Mr. Aditya Jain, Advocate for respondents No.1 and 2 in
CWP Nos.27626, 27638 and 27735 of 2013.

Mr.Narender Bhukal, Advocate for
Mr. Gagandeep S. Wasu, Advocate for
respondents No.1 and 2 in CWP Nos.24167 & 24173 of 2014.

ARUN MONGA, J. (Oral)

1.) This order of mine shall dispose of a bunch of writ petitions which arise out of common grievance based on the same facts and law.

2.) Succinctly put, the case of the petitioners is that they are entitled to stepping up of their pay w.e.f. the date when their juniors were granted the higher salary on account of promotion after the petitioners had caught up with them.

3.) The petitioners, who belong to the general category, contend that the respondents had granted promotion to the reserved category candidates to the post of UDC, Head Clerk and Circle Superintendent and pursuant thereto, they were released the consequential benefits. The details

of comparative chart of all the petitioners vis-a-vis reserved category candidates with dates of promotion are as under:-

C.W.P. No. 24170 of 2014 titled as “O.P. Verma vs. Uttari Haryana Bijli Vitran Nigam Ltd and Another”

Name of Petitioner with Deg. & Seniority no.	Date of joining	Name juniors official in Reserve Catg. With seniority no.	Date of joining	Date of Impugned order/Orders passed qua the petitioner
O.P. Verma UDC-Sen. No. 110 Appointed as LDC Promoted as UDC Promoted as Head Clerk Promoted as Circle Suptd.	09.10.68 01.05.80 27.05.08 ----	Sube Singh UDC-Sen. No. 112 Appointed as LDC Promoted as UDC Promoted as Head Clerk Promoted as Circle Suptd	03.03.72 25.04.80 12.11.02 11.07.06	12.11.2002, 11.07.2006 & 01.04.2014 attached as Annexure P-4, P-5 and P-9

C.W.P. No. 24173 of 2014 titled as “Hansraj vs. Uttari Haryana Bijli Vitran Nigam Ltd and Another”

Name of Petitioner with Deg. & Seniority no.	Date of joining	Name juniors official in Reserve Catg. With seniority no.	Date of joining	Date of Impugned order/Orders passed qua the petitioner
Hans Raj UDC-Sen. No. 281 Appointed as LDC Promoted as UDC Promoted as Head Clerk Promoted as Circle Suptd.	02.05.72 23.07.93 13.09.10 ----	Ujaggar Singh UDC-Sen. No. 299 Appointed as LDC Promoted as UDC Promoted as Head Clerk Promoted as Circle Suptd	04.09.85 16.08.93 19.12.06 30.08.08	19.12.2006, 30.08.2008 & 01.04.2014 attached as Annexure P-4, P-5 & P-9

C.W.P. No. 25133 of 2014 titled as “Mahabir Singh Goyat vs. Dakshin Harayana Bijli Vitran Nigam Limited and Others”

Name of Petitioner with Deg. & Seniority no.	Date of joining	Name juniors official in Reserve Catg. With seniority no.	Date of joining	Date of Impugned order/Orders passed qua the petitioner
Mahabir Singh Goyat (Sen. No. 120) Joined as LDC UDC (Seniority No.419 as UDC) Commercial Assistant Circle Assistant Deputy Superintendent/ Head Clerk	28.12.74 12.03.90 06.03.06 08.05.09 14.05.10	Om Parkash (Sen. No.127) Joined as LDC UDC (SeniorityNo.438 as UDC) Commercial Assistant Circle Assistant Deputy Superintendent/ Head Clerk Circle Superintendent	08.10.80 07.01.90 22.01.03 25.04.07 25.04.08 11.08.10	29.05.2014 attached as Annexure P-10

C.W.P. No. 25313 of 2014 titled as “Radhey Shyam Vs. Dakshin Harayana Bijli Vitran Nigam Limited and Others”

Name of Petitioner with Deg. & Seniority no.	Date of joining	Name juniors official in Reserve Catg. With seniority no.	Date of joining	Date of Impugned order/Orders passed qua the petitioner
Radhey Shyam (Sen. No.121) Joined as LDC UDC (Seniority No.415-Aas UDC) Commercial Assistant Circle Assistant Head Clerk Circle Superintendent	02.01.75 03.02.90 07.03.06 24.04.09 29.04.10 Retired as HC	Om Parkash (Sen. No.127) Joined as LDC UDC (SeniorityNo.438as UDC) Commercial Assistant Circle Assistant Head Clerk Circle Superintendent	08.10.80 07.01.92 22.01.03 25.04.08 26.07.10 11.08.10	29.05.2014 attached as Annexure P-10

C.W.P. No. 26426 of 2014 titled as “I.D. Jindal vs. Haryana Power Generation Corporation. Ltd. and Others”

Name of Petitioners with Desg. & Seniority no.	Date of joining	Name juniors official in Reserve Catg. With seniority no.	Date of joining	Date of Impugned order/Orders passed qua the petitioner
I.D. Jindal JE/S (Sen. No 254) D.O.J. as SA Promoted as SSA Promoted as JE/S Promoted as JE-I	 01.02.72 16.08.77 04.05.87 ---	Channa Ram JE/S (Sen. No 141) D.O.J. SA Promoted as SSA Promoted as JE/S Promoted as JE-I	 03.06.72 24.04.73 25.06.81 24.08.98	20.03.2014 attached as Annexure P-7

C.W.P. No. 27626 of 2013 titled as “Katar Singh vs. Dakshin Haryana Bijli Vitran Nigam and another”

Name of Petitioner with Deg. & Seniority no.	Date of joining	Name juniors official in Reserve Catg. With seniority no.	Date of joining	Date of Impugned order/Orders passed qua the petitioner
Katar Singh UDC (Sen. no.112) D.O.J. as UDC Promoted as Supdt.(H.O.) Promoted as Under Secy.	 27.05.68 29.03.96 08.04.03	Ram Singh UDC (Sen. No.186) D.O.J. as UDC Promoted as Supdt.(H.O.) Promoted as Under Secy.	 12.07.71 10.06.86 06.12.91	12.01.2010 and 21.11.2013 attached as Annexure P-4 & P-9

C.W.P. No. 27638 of 2013 titled as “Sube Singh Grewal vs. Dakshin Haryana Bijli Vitran Nigam and another”

Name of Petitioner with Deg. & Seniority no.	Date of joining	Name juniors official in Reserve Catg. With seniority no.	Date of joining	Date of Impugned order/Orders passed qua the petitioner
Sube Singh UDC (Sen. No. 181) D.O.J. as UDC Promoted as Supdt.(H.O.) Promoted as Under Secy.	 27.05.68 02.09.02 --	Ram Singh UDC (Sen. No.186) D.O.J. as UDC Promoted as Supdt.(H.O.) Promoted as Under Secy.	 12.07.71 10.06.86 06.12.91	12.01.2010 and 21.11.2013 attached as Annexure P-4 & P-8

C.W.P. No. 27735 of 2013 titled as “Piare Lal vs. Dakshin Haryana Bijli Vitran Nigam and another”

Name of Petitioner with Deg. & Seniority no.	Date of joining	Name juniors official in Reserve Catg. With seniority no.	Date of joining	Date of Impugned order/Orders passed qua the petitioner
Piare Lal UDC (Sen. No.238) D.O.J. as UDC Promoted as Supdt.(H.O.) Promoted as Under Secy.	16.08.72 27.08.05 --	Rattan Lal UDC (Sen. No. 252) D.O.J. as UDC Promoted as Supdt.(H.O.) Promoted as Under Secy.	04.02.75 07.04.95 29.05.06	12.1.2010 & 21.11.2013 attached as Annexure P-4 & P-7

C.W.P. No. 24167 of 2014 titled as “Prem Chand vs. Uttari Haryana Bijli Vitran Nigam Ltd and Another”

Name of Petitioner with Deg. & Seniority no.	Date of joining	Name juniors official in Reserve Catg. With seniority no.	Date of joining	Date of Impugned order/Orders passed qua the petitioner
Prem Chand UDC-Sen. No. 291 Appointed as LDC Promoted as UDC Promoted as Head Clerk Promoted as Circle Suptd.	01.04.84 23.07.93 13.09.10 ----	Ujaggar Singh UDC-Sen. No. 299 Appointed as LDC Promoted as UDC Promoted as Head Clerk Promoted as Circle Suptd	04.09.85 16.08.93 19.12.06 30.08.08	19.12.2006, 30.08.2008 & 01.04.2014 attached as Annexure P-4, P-5 & P-9

4.) The dates of promotion as well as seniority list are not under dispute. The petitioners are seeking the benefit on the basis of policy/instructions dated 14.10.1999, whereby, a decision was taken that no employee belonging to the reserved category should be allowed the benefit of accelerated seniority over his senior employee belonging to the general category on account of his accelerated promotion from the feeder service under the policy of reservation. Subsequently, vide instructions dated 16.03.2006 as also instructions dated 28.02.2013, the Government of Haryana accelerated the seniority of the reserved category employees and the same was subject matter of challenge before this Court. Vide different

judgments rendered by this Court both the said policies/instructions, *ibid* were set aside and it was held that the same are in violation of Article 16 of the Constitution of India as also the law laid down by the Hon'ble Apex Court in case titled as "**M. Nagaraj Vs. Union of India**" reported in (2006) 8 SCC 212.

5.) The learned counsel for the petitioners contend that petitioners' case is squarely covered by judgment rendered by this Court passed in **Prem Kumar Verma and others Vs. State of Haryana, CWP-17280-2011** (Annexure P-14). Reliance is placed particularly on the following part of the said judgment:-

"In LPA No. 1749 of 2011 titled as State of Haryana and others vs. Kiran Bala and another, decided on 26.09.2011, this Court while deciding the appeal preferred by the State of Haryana against the judgment dated 28.04.2011 passed by the learned Single Judge in CWP No. 8318 of 2010 wherein the orders denying the benefit of stepping up of their pay at par with the juniors belonging to the reserved category who were promoted earlier to them on account of accelerated promotion were set aside on the ground that the respondents were unable to justify their action of granting the benefit of 85th Amendment Act of 2009 vide instructions dated 16.03.2006 being contrary to the judgment of the Supreme Court in the cases of Ajit Singh Janjua (supra) and M. Nagaraj (supra). The Division Bench of this Court has also observed in its order dated 26.09.2011 that in pursuance to the judgment passed by the Supreme Court in M. Nagaraj's case (supra), State of Haryana did not carry out any exercise for ascertaining the factors noticed by the Hon'ble Supreme Court for grant of accelerated seniority and promotion pursuant to the 85th Constitutional Amendment to the reserved categories. In

view of the above, this Court has no option and hesitation to hold that the decision of the Government of Haryana, as circulated through its instructions dated 16.03.2006 (Annexure P-8), granting accelerated seniority to the scheduled caste employees as a consequence of promotion under the reservation policy, is ultra vires as the same runs counter to the dictum in M. Nagaraj's case (supra) and, therefore, deserves to be quashed."

6.) Learned counsels for the petitioners further rely on another judgment rendered by this Court in the case of **Rajbir Singh Vs. State of Haryana and others** passed in **CWP-25512-2012** the relevant part whereof is extracted hereinbelow:-

"The contention of some of the counsels for the private respondents that promotions already granted to some of them should not be disturbed as they may be entitled to accelerated promotion after new policy is framed by the Government is also totally misconceived, as any promotion granted in terms of the 2006 and 2013 policies, which have been quashed, certainly deserves to be recalled. Acceptance of this argument would mean putting cart before the horse. As and when any policy is framed by the Government, whosoever will be entitled to any benefit thereunder, may claim and get the same. The benefit cannot be granted in anticipation as the provisions of Article 1 (4A) of the Constitution of India are merely enabling and not mandatory.

For the reasons mentioned above, the writ petitions are allowed. The 2013 policy, issued on 28.2.2013, providing for reservation in promotion is set aside. The 2006 policy, issued on 16.3.2006, had already been set aside by this court in Prem Kumar Verma's case (supra). Any accelerated promotion/seniority granted on the basis of the aforesaid policies, is liable to be reversed. Ordered accordingly. Necessary action be

taken within a period of 3 months from the date of receipt of a copy of the judgment.”

7.) *Per contra*, the learned counsel for the respondents contends that vide a later judgment titled as **“Ram Kumar Bhadu and others Vs. Dakshin Haryana Bijli Vitran Nigam and others”** reported as **2006 (SCT) 779**, the above 2 judgments relied by the petitioners’ learned counsel were also discussed and distinguished. They contend that the later judgment of Ram Kumar Bhadu, *ibid* is squarely against the petitioners and, therefore, the writ petitions deserve to be dismissed.

8.) Having gone through the pleadings of the parties as also having heard the rival contentions of the learned counsel appearing for the respective parties, I am of the opinion that the case of the petitioners is squarely covered by the judgments rendered in **Prem Kumar Verma and others Vs. State of Haryana** and **Rajbir Singh Vs. State of Haryana and others**, *ibid*, and the reliance placed by the learned counsel for the respondents on the later judgment of Ram Kumar Bhadu, *ibid* is misplaced. It would be instructive to reproduce the relevant extract of Ram Kumar Bhadu's judgment hereinbelow:-

“From the chart, it is clear that Azad Singh was promoted as Draftsman on 19.3.1979, whereas the petitioners i.e Chand Ram was promoted as Draftsman on 28.9.1979, Rajbir Singh on 27.9.1979, Ram Kumar on 28.9.1979 and Zile Singh on 25.9.1970. As the petitioners were senior to Azad Singh, hence on the post of Draftsman, the respondents have rightly given stepping up of pay to the petitioners at par with Azad Singh. Now the question to be decided in the present petition is whether the petitioners are entitled to stepping up of pay as Head Draftsman? From the Chart, it is clear that the petitioners were promoted as Head Draftsman in the

year 2002 whereas Azad Singh was promoted as Head Draftsman on 13.9.1982. By the time, the petitioners got their promotion, he had already been promoted as Circle Head Draftsman on 15.1.1995. Hence on the date of promotion of the petitioners as Head Draftsman, they could not catch up with Azad Singh as he had already stood promoted as Circle Head Draftsman on 15.1.1995. Taking this fact into consideration, the subsequent claim of the petitioner for stepping up of pay at par with Azad Singh as Head Draftsman and subsequently as Circle Head Draftsman has been rejected.”

9.) A perusal of the above clearly reflects that in Ram Kumar Bhadu's case, *ibid* the petitioners belonging to the general category therein had not caught up with their counter-parts in the reserved category. This Court observed that by the time the petitioners therein had got promotion, their counterparts had gone 2 steps above them and, therefore, they were not entitled to the benefit of principle of “catch up”. I am, therefore, of the opinion that the judgment rendered in the case of Ram Kumar Bhadu, *ibid* is not applicable to the case of the petitioners. They (petitioners) had caught up with their counter-parts. Therefore, they are entitled to the benefit of stepping up their pay in accordance with the circular/instructions (Annexure P-1).

10.) Accordingly, these writ petitions are allowed and impugned orders as per the chart above qua the respective petitioners are quashed. The respondents are directed to give the consequential benefits to the petitioners w.e.f. the date when their juniors in the reserved category were granted the same. The petitioners shall also be entitled to grant of interest @ 6% per annum w.e.f. the date their juniors were granted the benefit. Let the needful

be done within a period of 6 weeks from the date of receipt of certified copy
of this order.

(ARUN MONGA)
JUDGE

February 25, 2019.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No