

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3291 of 2016 (O&M)
Date of Decision: 25.03.2019

Baldev Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. D.K. Bhatti, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. R.K. Malik, Sr. Advocate,
with Mr. Yogesh Sheoran, Advocate,
for respondent No.4.

Mr. Anurag Goyal, Advocate,
for respondent No.5.

RAJIV NARAIN RAINA, J.

1. The petitioner has challenged the office order dated January 29, 2016 whereby the previous order dated May 28, 2013 in his favour was withdrawn. The previous order granted retrospective promotion to the petitioner w.e.f. March 26, 2006 as Assistant Archivist which made him senior to three direct recruit Assistant Archivists appointed on the recommendations of the Haryana Staff Selection Commission from an advertisement notifying three vacancies. In the direct recruitment drive in the year 2017, the petitioner participated unsuccessfully. The three direct recruits were appointed in October 2007 while the petitioner was regularly promoted as an Assistant Archivist on June 30, 2008 as per turn. The 2013 order had made the petitioner senior to the three direct recruits while the

impugned order of 2016 places the petitioner lower in seniority to the direct recruit with reasons assigned. Those reasons are up for judicial scrutiny in this petition.

2. Facts in brief are that the cadre of Assistant Archivist consists of eight sanctioned posts. Service is governed by the Haryana Archives Department (Group-C) Service Rules, 1998 which prescribes quota of 75% by direct recruitment and 25% by promotion. Two posts fall to the share of promotees. In view of prevailing administrative instructions issued vide letter dated March 18, 1996 the Director, Scheduled Castes & Backward Classes Welfare Department clarified that no post, out of the two posts of promotion quota can be reserved for appointment, thereby further advising that the post of Assistant Archivist may be filled according to seniority.

3. One Sada Nand, a general category candidate was promoted as Assistant Archivist on March 26, 1996 against a vacancy which occurred on December 22, 1995. At that time, the petitioner had not acquired the requisite five years experience for promotion to the post of Assistant Archivist against a post falling vacant in December 1995. Therefore, the petitioner was not eligible to be considered for promotion and Sada Nand who fulfilled the eligibility conditions for promotion was promoted on March 26, 1996 and continued to occupy the post till his retirement from service on September 30, 2010. No post was available to accommodate any other claim prior to superannuation of Sada Nand on September 30, 2010. The office order dated May 28, 2013 gave retrospective promotion with effect from the date Sada Nand joined the promoted post on March 26, 1996 on the basis of roster point reservation in a quota of two posts and carry

forward principle.

4. Aggrieved by the office order dated May 28, 2013 one of the three direct recruits, namely, Anil Kumar filed a representation to the authorities claiming that the order was illegal and should be revoked. The petitioner and Anil Kumar were put to notice and were heard before the impugned order was passed on January 29, 2016 rectifying the mistake by withdrawing the previous order thereby restoring the status quo ante. Except making representations the petitioner did nothing concrete to challenge the promotion of Sada Nand as Assistant Archivist on March 26, 1996 in a court of law till he secured the order in 2013 assailed by Anil Kumar successfully in the department through a representation for justice.

5. The short question which arises for consideration is whether the department committed an illegality in passing the order dated January 29, 2016 revoking the order dated May 28, 2013 or is the earlier order correct in law. The answer is not far to seek. When the post of Assistant Archivist fell vacant on December 22, 1995 the petitioner was not even eligible as he did not possess five years service since he was appointed as a Clerk on regular basis on January 01, 1991. He acquired eligibility on January 01, 1996. The petitioner is a member of the Scheduled Caste to whom benefit of reservation is not available within the promotee quota of two posts out of the sanctioned strength of the cadre which stood at eight. It is not the case of the petitioner that Sada Nand was not eligible or available on the date of occurrence of vacancy and he was, therefore, rightly promoted in 1996 without disturbing any of the rights of the petitioner. The petitioner could not claim the reserve roster point in a quota of two posts in view of the

prevailing instructions of the Government of Haryana governing the subject of promotion on the basis of reservation.

6. It is argued by the State and the private respondents that no one can be promoted from retrospective date and made senior to direct recruit who was appointed earlier than the promotion of the petitioner on his turn later on. The law in State of Bihar and others v. Sri Akhouri Sachindra Nath and others, AIR 1991 SC 1244 is pressed into service on the dictum against retrospective promotion causing person to jump over direct recruits who became members of the service on their appointment in October 2007. Besides, without there being any post earmarked for SC category candidates the petitioner could not be promoted with retrospective effect to eclipse the rights of the direct recruits/respondents No.4 to 6 to seniority, seniority being the spinal issue raised in this case while claiming relief.

7. The petitioner takes shelter on the plea of discrimination urging that on the date of promotion of Sada Nand on March 26, 1996 he had acquired sufficient experience by the time Sada Nand was actually promoted as he had by then acquired the requisite five years experience on January 01, 1996 thus, by giving retrospective promotion to him, the illegality committed upon the petitioner in 1996 was rectified in May 2013 and the order withdrawing the benefit is on the face of it illegal. It is further argued that the instructions dated January 18, 1996 provided, while referring to previous Haryana Govt. instructions dated May 04, 1994 that in case where the posts are 1 to 4 in any cadre, the benefit of reservation cannot be given to any category. As a matter of fact, the letter dated January 18, 1996 is from the Director, Archives Department, Haryana to the

Director, Scheduled Castes and Backward Classes, Welfare Department, Haryana soliciting advice. The actual instructions covering the subject of reservation are those in letter dated May 04, 1994. The advice received for Welfare department prohibited roster point promotion in a quota of two posts. There is therefore no merit in these submissions sufficient to set aside the impugned order dated January 29, 2016 as it would be contrary to prevailing policy. Those instructions are not under challenge.

8. The petitioner had claimed that he was first promoted on ad hoc basis on October 17, 1994 against the post meant for Scheduled Caste. A perusal of the order dated October 17, 1994 shows that it has unmistakably characterized the said so-called promotion as a “stop gap arrangement” while stipulating in clear terms that the promotion will not count for seniority. Moreover, this office order records that the ad hoc promotion is against a vacancy reserved for Scheduled Caste to be filled by direct recruitment. Accordingly, and without doubt the arrangement was fortuitous and conferred no rights on the petitioner for claiming promotion with effect from the date Sada Nand was promoted on March 26, 1996 or even an earlier date. There is apparently also a great deal of delay by lapse of time on the part of the petitioner failing to challenge the order of promotion of Sada Nand which continued in incumbency till his retirement in 2010. This is an additional reason in my view to deny relief to the petitioner in challenge to the impugned order. The State is correct in arguing that two persons cannot be deemed to work on the same post as that would create an anomaly. The petitioner failed to make the grade in direct recruitment when respondents No.4 to 6 were appointed. What he could not achieve on merit

he wants by stealth. It would not be irrelevant to mention that respondent Anil Kumar also belongs to the Scheduled Caste category. The power of correcting a mistake is inherent in the State to maintain purity of record and to avoid a situation where a person aggrieved prays for a writ of certiorari for removal of error in the proceedings.

9. Having considered the submissions and the counter submissions of the learned counsel, I find no error or infirmity in the impugned order dated January 29, 2016 passed by the competent authority applying proper principles after hearing the petitioner and the representationist Anil Kumar. The petitioner cannot be made senior to the private respondents, an undue benefit he obtained by an officer's sleight of hand on irrelevant considerations on policy shift and against the position prevailing in 1996 with promotion vacancy arising in 1995. In search of flaw in the impugned order I find none to turn the tables.

10. As a result of the above discussion, the petition fails and is dismissed. Obviously the stay is vacated.

(RAJIV NARAIN RAINA)
JUDGE

25.03.2019
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Whether speaking/reasoned Yes

Whether reportable Yes/No