

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4810 of 2015

Date of decision : 13.09.2019

Surinder Kumar

...Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Amrita Nagpal, Advocate for
Mr. Shireesh Gupta, Advocate for the petitioner.

Ms. Safia Gupta, Assistant Advocate General, Haryana.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance which is being raised by the petitioner is that he is entitled for promotion to the post of Leading Fireman from the date his juniors were promoted.

As per the averments made in the writ petition, petitioner was appointed as a Fireman on 23.01.1996. The next promotion is to the post of Leading Fireman. Learned counsel for the petitioner does not dispute that seniority is being maintained in the Cadre of Fireman District-wise.

While working as a Fireman at Dabwali, petitioner made a request for his transfer to Panipat and he was transferred in May, 1997. Thereafter, petitioner was transferred from Panipat to Panchkula on 07.01.2011. The grievance of the petitioner is that he was not promoted to the post of Leading Fireman, whereas, Karan Singh, who was appointed as a Fireman in Dabwali after the appointment of the petitioner was promoted to

the said post of Leading Fireman on 29.03.2011. The prayer of the

petitioner is that once the person junior to him has been promoted as a Leading Fireman, he is also entitled for the said benefit with effect from the date, person junior to him has been promoted.

Upon notice of motion, respondents have filed the reply. In the reply, respondents have submitted that seniority of the Fireman is District-wise and not State-wise. The promotion is to be made from the eligible candidates available in a particular District, where the post of Leading Fireman is to be filled up. In reply to the contention raised on behalf of the petitioner that a person junior to the petitioner, namely, Karan Singh has been promoted to the post of Leading Fireman in March, 2011, the respondents have stated that in the year 1997, petitioner on his own request was transferred to Panipat and hence lost his entitlement to be considered for promotion in Dabwali, where Karan Singh was working and Karan Singh cannot be treated junior to the petitioner as the petitioner was working in Panipat and thereafter in Panchkula at the time of promotion of Karan Singh in 2011 and there is no inter-se seniority between the petitioner and Karan Singh as both of them were working in different Districts. It has further been stated by the respondents that no one, who was junior to the petitioner either in Panipat or in Panchkula, has been promoted in preference to the petitioner. Learned counsel for the petitioner disputes the fact that transfer of the petitioner from Dabwali to Panipat was ever made on his request and states that the same was on administrative ground and, therefore, the petitioner cannot be made to suffer on account of transfer.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is not disputed that the promotion to the post of Leading Fireman is made on the basis of District-wise seniority and not State-wise. The post of Leading Fireman is to be filled up from the Fireman from the same District. It is admitted by the petitioner that Karan Singh was working in Dabwali in District Sirsa at the relevant time i.e. in March, 2011, when he was promoted as Leading Fireman, whereas the petitioner was working in Panchkula. As there is no combined seniority list of all the Firemen working in the State of Haryana, hence, it cannot be said that Karan Singh, on the date of his promotion in March, 2011 was in any manner junior to the petitioner. Seniority is to be determined in each District in respect of the Firemen working and the said seniority is to be taken into consideration, while effecting promotion to the post of Leading Fireman. At the time of promotion of Karan Singh as Leading Fireman in District Sirsa (Dabwali), petitioner was not posted there and was working in Panchkula, hence, claim of the petitioner that he is senior to Karan Singh in District Sirsa (Dabwali) cannot be accepted and is, accordingly, rejected.

Learned counsel for the petitioner has argued that transfer of the petitioner from Dabwali to Panipat was on administrative ground and not on his own request, therefore, no benefit of seniority can be taken from him on the basis of the said transfer of the petitioner from Dabwali to Panipat. Respondents have produced the order by which the petitioner was transferred from Dabwali to Panipat. The same is reproduced is as under:-

ORDER

“The following transfer/postings of Fire Staff of Municipalities are hereby ordered with immediate effect:-

FIRE STATION OFFICER

<i>Sr. No.</i>	<i>Name of Official</i>	<i>From</i>	<i>To</i>	<i>Remarks</i>
1	Sh. Ram Avtar Sharma	Jind (U.T.)	Rewari	Vice Sh. Hanuman Chander Sihag
2	Sh. Hanuman Chander Sihar	Rewari (U.T.)	Jind	Vice Sh. Ram Avtar Sharma

FIREMAN

3	Sh. Surinder Kumar	Dabwali	Panipat	Against vacancy (on request)
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*Dated : Chandigarh
12 May, 1997*

*Sd/-
Gulab Singh Sarot,
Director Local Bodies, Hry.”*

A bare perusal of the above order would show that transfer of the petitioner has been made on his own request. Learned counsel for the petitioner is disputing the authenticity of this order on the ground that under the RTI, petitioner was told that the order is not available with the respondents, whereas an order of transfer has been attached with the reply and, therefore, the order of transfer attached with reply does not have any authenticity and hence, cannot be taken into consideration. Learned counsel further dispute the said order of transfer on the ground that only a typed copy of the order has been attached and not the original.

Learned counsel for the petitioner is raising disputed question of fact which cannot be gone into by this Court. Once, an order has been attached and the same has been attached with reply after verifying the same, it is difficult for this Court to disbelieve the same unless proved, otherwise, and that too with the cogent evidence on record. There is no cogent evidence produced by the petitioner to discard the transfer order, which the

respondents have attached and has been reproduced above, which clearly shows that transfer of the petitioner from Dabwali to Panipat was made on his own request. Under these circumstances, the plea of the petitioner that the transfer order is not authentic, cannot be accepted by this Court under the facts and circumstances of this case.

A liberty was offered to learned counsel for the petitioner to have her grievance settled before Civil Court against the transfer order in case she believes that the order of transfer, which has been attached by the respondents, is not correct. Counsel had refused the said offer of this Court. This Court cannot go into the disputed question of facts.

In the present case, the order of transfer has been attached by the respondents alongwith the reply, which is being disputed and the dispute is only oral without any valid justification or any cogent evidence to rebut the said document. Under these circumstances, this Court has no option but to accept the transfer order as correct.

Keeping in view the above, once the petitioner was not working in Dabwali at the time when Karan Singh was promoted in the year 2011, hence, Karan Singh cannot be treated junior to the petitioner in any manner so as to entitle the petitioner the promotion to the post of Leading Fireman in Dabwali (Sirsa). Further, petitioner has not been able to substantiate that any person, who was junior to him either in Panipat or in Panchkula, has been promoted in preference to him.

Under these circumstances, the request of the petitioner for the grant of benefit of promotion to the post of Leading Fireman on the ground that Karan Singh was junior to him, cannot be accepted.

Writ petition is consequently dismissed with no order as to costs.

September 13, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? Yes
Whether reportable? Yes