

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

CWP No.8962 of 2015 (O&M)
Date of Decision:25.1.2019

Harinder

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr.Sunil K.Nehra, Advocate for the petitioner

Ms.Shruti Jain Goyal, DAG, Haryana

RAJIV NARAIN RAINA, J.

1. The petitioner is an Ex-serviceman. He applied for the post of Conductor under Outstanding Sportsperson ESM (General) Category in Haryana Roadways. He was selected by the Haryana Staff Selection Commission. The public advertisement was issued in April, 2008. The selection took place in 2009 and his name was recommended to the Transport Department, Haryana for appointment vide Commission Letter dated 6.6.2012. He was offered appointment as Conductor by the General Manager, Haryana Roadways, Gurgaon by order dated 3.5.2013.

2. Unfortunately, after his selection, the petitioner suffered bodily injuries in a road accident on 6.7.2011 in which one of his legs had to be amputated. He wears a prosthetic leg. With the offer of appointment in hand, he was sent for medical examination. He was not offered appointment because he was found to be unfit for the post of Conductor. He represented to the Government, but got no favourable response from them. The petitioner made a representation dated 10.1.2014 (Annex. P-3) to the Director General,

cannot be posted on the post of Conductor, he may be given duty of Conductor in the Booking Branch or at Bus Stand. In response, he received order dated 22.5.2014 (Annex. P-4) cancelling his appointment. He had served 17 years in the Army as Sepoy. He relied on the case of one Sada Ram who was also disabled, but was offered appointment as Conductor.

3. The respondents in their reply to the petition have maintained that appointment to Sada Ram was made by mistake. The dealing hand had dealt with his case in a very casual manner and a departmental action is being taken under Haryana Civil Services (Punishment and Appeal) Rules, 1987. The petitioner cannot take benefit of negative equality. In support of this contention, the respondents rely on the judgment in *Chaman Lal vs. State of Punjab and others* (Civil Appeal No.2273 of 2011 decided on 16.5.2012) wherein the Supreme Court held that in case an undue benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. If a wrong is committed in an earlier case, it cannot be perpetuated. Therefore, the petitioner has no claim for parity with the case of *Sada Ram*.

4. The petitioner's physical disability has been assessed by the Civil Surgeon at 70%. I had called him to appear personally in Court. I find him robust and pleasant in appearance, but for his prosthetic leg which is not especially noticeable, nor detracts from his being otherwise fit. Notice of motion was issued in this case on 7.5.2015 recording the statement of the learned counsel for the petitioner that the petitioner is in a position to perform duty of Conductor with an artificial leg and drew attention of one similarly situated Conductor allowed to remain on the said post working at the Bus Stand. The petitioner can also be adjusted at any other suitable place of

for appearance of the petitioner in Court on the next date of hearing, when the matter came up on 5.10.2018, the following order was passed:-

“Petitioner is present in Court today.

The petitioner competed for the post of Conductor in Haryana Roadways in a regular recruitment process. He was selected and offered appointment by letter dated 03.05.2013 (Annex. P-1). Unfortunately, the petitioner met with an accident in which he lost part of his left leg above the knee. He wears an artificial limb. In the past he had served in the Army as a Sepoy in EME-Corps and was discharged from service in the year 2004. He is present in Court today and appears to be otherwise a physically fit person but for his artificial leg.

The respondents have refused appointment citing the medical unfitness report of the Civil Surgeon, Gurugram declaring the petitioner 70% physically disabled. The demand of the job is such that it needs physically fit persons. The General Manager, Haryana State Transport, Gurgaon has passed the order dated 22.05.2014 cancelling the appointment of the petitioner by revoking the offer of appointment.

Mr. Nehra cites the case of Sada Ram who was also physically disabled. The Deputy Civil Surgeon, Rewari declared Sada Ram fit for Bus Adda Conductor against the advertised vacancy of Conductor. On the basis of the medical certificate Sada Ram was offered appointment. Later, the Department initiated process of terminating the appointment of Sada Ram against which action he approached this Court in CWP No. 1467 of 2016, Sada Ram Vs. State of Haryana and others which was disposed of on the Statement of State Counsel that the petitioner was allowed to continue against the post of Clerk, a post which was not advertised.

In the written statement, the State has referred to the Gazette notification dated 04.06.2005 (Annex.P-II) endorsed on

27.06.2005 issued by the Haryana Government, Social Justice and Empowerment Department in exercise of powers conferred by the Proviso to Sub Section (2) of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996). Having regard to the type of work the notification exempts the posts of Drivers and Conductors in the Haryana Roadways from the provisions of Act.

This is a blanket notification which may serve public interest but still no guidelines have been laid down as to the nature of the physical disability from person to person in the same category for which percentage of handicap may not be the best indicator. Each physical condition of a categorized person would require to be tested by the nature of work and the job requirements. A person with an artificial limb may be inappropriate to hold the post of driver but the same cannot be said with any exactitude for the post of Conductor which may depend on the nature of the disability suffered and from case to case.

In order to initiate an experiment to know where the petitioner stands, an interim direction is issued to the respondent-Department to permit the petitioner to work as a Conductor for two weeks on any bus route found convenient to assess his work performance. Accordingly, a report be submitted to this Court as to the fitness of the petitioner while working hands on. The petitioner will be assigned duty in a bus under the supervision of a regular Conductor who will watch his work during travel but not offer a helping hand unless safety demands and would ensure that the petitioner alone discharges all the duties of the Conductor on the route during travel. For this attempt, the petitioner will not be entitled to any salary nor would this arrangement settle any right or equity to claim appointment. After two weeks are over, the services of the petitioner will be utilized for another two weeks as Adda Conductor and Clerk to see his performance in relation to his disability. The report

should cover this aspect also to see if an alternative arrangement is possible consistent with administrative exigencies and demands of public interest with a touch of humanity.

Mr. Rathee will transmit this order to the Transport Department to take steps to carry out the experiment. The petitioner will report in the office of the General Manager, Haryana State Transport, Gurugram on 11.10.2018 at 10.00 AM.

List on 26.11.2018.

A copy of the order be given to the State counsel under the signatures of Bench Secretary.”

5. The experiment was taken forward. The petitioner was asked to report in the Office of General Manager, Haryana Roadways, Gurugram on 11.10.2018 at 10.00 AM. Further time was sought on 26.11.2018 by State Government saying that they will require 3-4 weeks to assess the work of the petitioner as *Adda* Conductor and Clerk to check his compatibility at the work place and to the environs.

6. Mr.Gaurav Antil (HCS), General Manager, Haryana Roadways, Gurugram has filed his affidavit dated 16.1.2019. The affidavit contains the report dated 27.12.2018 (Annex.A-1) made in compliance of the orders of this Court. The petitioner was allowed to work as Conductor for two weeks and as a Booking/Duty Clerk for 2 weeks vide letter dated 29.10.2018. His work performance is reported as under:-

“1.Report of Duty Inspector:- That Sh. Harinder s/o Sh.Prithvi Singh is not fit to issue tickets on the Bus.

2.Report of Station Supervisor:- That Sh.Harinder s/o Prithvi Singh is capable for the work of Advance Booking.”

7. This has changed the complexion of the case. The petitioner has been found capable to perform duties in Advance Booking. The experiment

the report of the General Manager, Haryana Roadways, Gurugram finding the petitioner capable of working as Conductor in Advance Booking.

8. I have heard Mr.Nehra, learned counsel for the petitioner and Ms.Shruti Jain, learned DAG for the State, at considerable length.

9. The petitioner has become differently abled after regular selection and the offer of appointment. He became a victim of a road accident which left him with a prosthetic leg below the left knee. He is an amputee who has suffered left knee disarticulation and was recommended fitment of prosthesis.

10. In view of the report (Annex.A-1), a prima facie case is made out for appointment, as the petitioner has been found capable of work in Advance Booking. He should not be deprived of that opportunity and to earn his livelihood. There is no dispute regarding the merit of the petitioner to hold the post of Conductor. He can be offered appointment as a Conductor to work in Advance Booking at the Bus Stand where he can discharge duties and responsibilities of his Office. Accordingly, there is no occasion to go into the case of Sada Ram or that his appointment was a mistake. The petitioner does not claim negative parity. He claims in a positive sense. In fact, his disability can turn to his advantage as he has 17 years experience as a Sepoy in the Army to his credit which is a guarantee of discipline. The disability law should act to his aid. The Court should go by the opinion of the General Manager, Haryana Roadways, Gurugram. The petitioner can remain on the strength of Conductors on appointment, but deputed/posted to work in such a manner that is consistent with his disability. It is not that conductors are not posted in Advance Booking counter of the Roadways.

11. Accordingly, this petition is allowed and the impugned order dated 22.5.2014 passed by the General Manager, Haryana State Transport,

Annex. P-4) is hereby quashed. The respondents are directed to

consider appointing the petitioner on the post of Conductor, if found otherwise eligible, in one of the vacancies available and he may be posted to work in such a manner that is consistent with his disability. The service benefits will be notional, but actual from the date of appointment in the light of this order. His seniority will be counted from his batch and merit position determined by the Commission.

25.1.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No