

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

(346)

**CWP-11187-1996 (O&M)
Decided on: March 04, 2020.**

SUBASH CHAND GUPTA

.... Petitioner

Versus

STATE OF HARYANA AND ORS.

..... Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Panwar, Advocate
for the petitioner.

Mr. Hitesh Pandit, Additional Advocate General Haryana.

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RITU BAHRI, J. (Oral)

The facts of the case are that the petitioner was appointed as canal patwari on 18.11.1974 in the Irrigation Department and was brought on regular cadre, on 01.01.1975 by the respondent authorities. The petitioner at that time was working as Assistant Revenue Clerk in Bhakra Canal, Water Services, Kaithal. As per the seniority list (Anneuxre P1) prepared on 29.06.1991, the petitioner was shown at Sr. No. 116 whereas the name of the respondent No.7-Parmanand Goen was shown at Sr. No. 126. But despite junior to the petitioner as per the seniority list, on 12.01.1984 respondent No.7 was promoted from the Post of Canal Patwari to Assistant Revenue Clerk.

Feeling aggrieved the petitioner along with other canal patwaris made a representation before the competent authority challenging the

promotion of respondent No.7 and on consideration of their claim/representation respondent No.7 was reverted back to the post of canal patwari vide office order No. 9057-60/170 dated 19.09.1984.

Thereafter, after a gap of more than seven years respondent No.7 on 31.12.1991 filed an appeal against the reversion order dated 19.09.1984 before the Chief Engineer/Canals, Irrigation Department, who on the very next date i.e., 01.01.1992 accepted the appeal of the respondent No.7 vide letter No. 36/7-NGE-II/92 dated 01.01.1992 (Annexure P2) and decided that the reversion orders are not in accordance with Rules and thus withdrawn the office order No. 9057-60/170 dated 19.09.1984 and restored the respondent No.7 to his original Post of Assistant Revenue Clerk from where he was reverted back. Moreso vide letter No. 10528/48-ER dated 11.10.1995 (Annexure P3) office order No. 86-89/170-E dated 03.01.1992, the respondent No.7 was also paid arrears, withdrawing the earlier orders vide which arrears were withdrawn from respondent No.7.

Thereafter, the petitioner came to know about the impugned promotion orders of respondent No.7 in the month of August 1992 and he immediately made a representation to respondent No.3 for granting him seniority and other allowances w.e.f. 12.01.1984 as granted to respondent No.7 who was junior to him as per seniority list (Anneuxre P1) prepared on 29.06.1991.

Thereafter, on the basis of the representation of petitioner the respondent No.4 called for the comments from respondent No.6 who stated that the petitioner date of appointment is 18.11.1974 and the respondent No.7 was promoted to the post of Assistant Revenue Clerk because of his higher qualification of B.A. and merit of Assistant Revenue Clerk

(Annexure P9) and rejected the claim/representation of the petitioner vide impugned order 08.01.1996 (Annexure P17).

Feeling aggrieved, the present writ petition has been filed for quashing of the impugned order dated 08.01.1996 (Annexure P17) whereby the claim of the petitioner was rejected. A further prayer is made and for issuing direction to the respondent authorities to promote him as Assistant Revenue Clerk (ARC) w.e.f. 12.01.1984, the date on which the respondent No.7, who was junior to the petitioner was promoted by the respondent authorities.

The peculiar facts and circumstances of the case are that vide impugned order dated 08.01.1996 (Annexure P17) whereby the claim of the petitioner for granting him promotion to the post of Assistant Revenue Clerk (ARC) w.e.f. 12.01.1984, the date vide which the respondent No.7 who was junior to the petitioner as per the seniority list (Annexure P1) has been rejected. The respondents are not disputing the fact in the written statement that petitioner was senior to respondent No.7 as a canal patwari as per the seniority list (Annexure P1). However they have referred to Rule-10 (3) of the Punjab Public Works Department (Irrigation Branch Revenue Clerks' State Service Class III, Rules, 1856) which provides that appointment has to be made only on the basis of selection and no official shall be entitled to such appointment as a matter of right. The relevant paragraph of the said Rule is as under:-

(3) Notwithstanding anything in the above rules, appointment to the Service shall be made purely by selection and no official shall be entitled to such appointment as of right”.

Keeping in view the above Rules, respondent No.7 who was

B.A was considered to be higher in merit and was selected and promoted to the post of Assistant Revenue Clerk (ARC) by the Superintendent Engineering Bhakra Canal Circle, Kaithal vide letter dated 26.07.1993 (Annexure P9). Apart from the petitioner, there were other senior canal patwaris, who were ignored at the time of promotion of respondent No.7 when he was promoted on the basis of merit and selection. It is further admitted in the written statement that after promoting respondent No.7 he was reverted back but on appeal the reversion order was restored back vide order dated 01.01.1992 (Annexure P2) was set aside and he was restored back in promotion w.e.f. 12.01.1984. With respect to the petitioner it is stated that he was promoted along with other canal patwaris to the post of Assistant Revenue Clerk (ARC) vide order dated 31.08.1992 against the available vacant vacancies. However he has no right to claim promotion at par with respondent No.7 w.e.f. 12.01.1984 keeping in view Rule-10 (3). This written statement was filed with respect to the Rules way-back on 20.01.1997 no replication has been filed by the petitioners to show that the appointment has to be made as per the seniority.

Keeping in view the above this Court finds no merits in the present writ petition.

Dismissed.

March 04, 2020

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**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No