

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

CWP-7784-2017 (O&M)

Date of decision: October 27, 2022

Chander Bhan and another

....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.S. Maanipur, Advocate for the petitioners.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing letter/communication dated 23.01.2017 (Annexure P-13), sent by respondent No.2 vide letter/order dated 27.02.2017 (Annexure P-14), whereby proposal for amendments in the Draftsman and Tracer (Group-C) Service Rules, 1998 has been rejected after almost 10 years without rhyme or reason.

2. First, the succinct factual background as pleaded in the petition. Petitioners were selected as Ferro Khalasi on 29.01.1999; petitioner No.1 joined on 05.02.1999 and petitioner No.2 joined on 08.02.1999 as such. There was no provision in the Service Rules (Annexure P-2) for promotion from Group-D to the post of Tracer, but there is a provision for relaxation. Vide order dated 03.01.2001, one Shri Roshal Lal, Peon, and vide order dated 01.09.2004, one Shri Ramesh Chand, Beldar were promoted. Roshan Lal, Peon was only Matriculate with Drawing and Ramesh Chand, Beldar was having Draftsman Diploma of two years. Petitioners were also having the Diploma in the trade of

Draftsman from the same institution from where Ramesh Chand, Beldar passed the Diploma in Draftsman, but petitioners were not promoted. They submitted their representation through respondent No.3-The Superintending Engineer, PWD B&R Gurgaon Circle. Upon which, respondent No.2-Engineer-in-Chief, Haryana made recommendations vide his letter dated 31.07.2007 (Annexure P-5) for amendment in the Drafts & Tracers Service Rules, 1998. Respondent No.3 vide letter dated 01.04.2013 (Annexure P-6) recommended the names of the petitioners for being considered sympathetically for promotion to the post of Tracer. Another recommendation was made by respondent No.3 vide letter dated 13.05.2013 (Annexure P-7) for necessary relaxation in qualification. However, respondent No.3 vide letter dated 13.06.2013 (Annexure P-8) wrote to the Land Acquisition Officer, Haryana PWD (B&R) Gurgaon that petitioners were not entitled for promotion to the post of Tracer. Petitioners served legal notice dated 16.03.2016 (Annexure P-9). When no action was taken, they preferred CWP-10732-2016, which was disposed of vide order dated 27.05.2016 (Annexure P-11) with a direction to respondent No.1 to take a final decision on the recommendaitons made by respondent No.2 vide letter dated 31.07.2007 within a period of four months. Respondent No.1 did not take any action within the stipulated time. Therefore, petitioners preferred COCP-3247-2016. Later, respondent No.1 vide impugned letter dated 23.01.2017 (Annexure P-13) rejected the claim of the petitioners without assigning any reasons, and the said rejection was conveyed to the petitioners vide letter dated 27.02.2017 (Annexure P-14). Hence, the present petition.

3. In the return dated 01.11.2017 filed on behalf of the respondents, following stand has been taken in Paras-6 to 8 of the Preliminary Submissions:-

“6. That the reason for rejecting the proposed amendments is that due to the advancement in technology and use of computers in drawing of maps etc., the earlier process of making drawings, for which posts of Ferro Khalasi were created, has been done away with. Therefore, practically there is no need for the posts of Ferro Khalasi in the changed circumstances. Keeping in view the above facts, the competent authority has decided to abolish all the vacant posts of Ferro Khalasi and the remaining cadre of Ferro Khalasi has been declared as diminishing cadre. An order to this effect has already been issued by the Government vide memo no.4/10/07-6B&R(W) dated 13.07.2017 after approval from the Finance Department Haryana. A copy of the memo dated 13.07.2017 is annexed as Annexure R-I.

7. That further the promotion avenues from the post of Ferro Khalasi to the post of Clerk is available under the Haryana Public Works Department Building and Roads Branch (State Service Group-C Ministerial Establishment of Subordinate Offices) Rules, 1980. As per appendix-B appended to rule-7 of the above said rules, the requisite qualification for a post of Clerk is matriculation plus five years experience as Peon or Chowkidar or Ferro Khalasi or Mali or Beldar or Carpenter etc. Further promotion avenues are also available to the post of Sub Divisional Clerk, Account Clerk, Assistant, Head Clerk, Head Assistant and Circle Superintendent.

8. That the promotion of Shri Roshan Lal, Peon and Shri Ramesh Chand, Beldar was provisional as the same was subject to the approval of the Haryana Subordinate Services Selection Commission (now known as Haryana Staff Selection Commission). The Commission found that the promotion orders of Shri Roshan Lal, Peon and Shri Ramesh Chand, Beldar are not in accordance to the provisions of the applicable service rules, therefore, did not approve the promotion orders of Shri Roshan Lal, Peon and Shri Ramesh Chand, Beldar. A copy of the commission letter dated 16.08.2017 is enclosed as Annexure R-2. As the promotion orders were issued subject to the approval of the commission, now necessary show-cause notices have been issued to Sh. Roshan Lal, Tracer and Sh. Ramesh Chander, Asstt. Draftsman as to why they may not be reverted back to their original posts of Peon and Beldar respectively. Copies of show cause notices are enclosed herewith as Annexure-R3 and R-4. Further action will be taken on receipt of reply to the show-cause notices issued to them.”

4. I have heard the rival contentions of learned counsel for the parties.

I shall now proceed to render my opinion thereon.

5. From the factual narrative, what emerges thus is that it is the conceded position that (A) Two of the counter-parts of the petitioners i.e.

Roshal Lal working as a Peon and Ramesh Chander working as a Beldar were

accorded promotion as Tracer by granting relaxation under Rule 18 of the Haryana Public Works Department (Building and Roads Branch) Draftsman and Tracers (Group C) Service Rules, 1998 (Annexure P-2); (B) The Head of the Department i.e. Engineer-in-Chief had recommended the case of the petitioners for promotion on parity with their counter-parts and along with recommendations dated 31.07.2007 (Annexure P-5) had also appended the Draft Rules to provide promotional avenues for the Ferro Khalasi to the next level of Tracers.

6. Before adverting further, it would be apposite to reproduce the existing relevant Rule-9(1)(XIII) and Rule-18 of Haryana Public Works Department (B&R Branch) Draftsman & Tracers (Group C) Service Rules, 1998, which are applicable to the petitioners:

“9. Method of recruitment- (1) *Recruitment to the Service shall be made,-*

xx xx xx xx

(XIII) *In case of Tracers (Civil) (Gurgaon Unit),-*

- (i) *by direct recruitment; or*
- (ii) *by transfer or deputation of an official already in Service of any State Government or the Government of India.*

xx xx xx xx

Provided that-

- (a) *if a candidate for the promotion quota is not available for any reason whether due to non-availability or unsuitability of any candidate, such vacancy may provisionally be filled up on adhoc basis by direct recruitment but it shall be made retrospectively assigned to an eligible candidate out of promotion quota as and when he becomes available and found suitable; and*
- (b) *in case the candidate for direct recruitment is not available, the post by keeping actually for direct recruitment retrospectively, may be filled by promotion or transfer provisionally (with the vacancy being actually assigned to the direct recruitment retrospectively). If such direct recruitment could not be made within two years, the provisional promotion or transfer, earlier made otherwise, the vacancy shall stand permanently re-allocated to the mode; vide which it was actually filled provisionally in the first instance.*

All promotions unless otherwise provided, shall be made on seniority-cum-merit basis and seniority alone shall not give any right to such promotions.”

xx xx xx xx

18. Power of relaxation- *Where the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.”*

7. A perusal of the aforesaid Rules leaves no manner of doubt that there are only two modes of recruitment on the post of Tracer. One by way of Direct recruitment and second by way of transfer or deputation of an official already in service. It thus, transpires that in the event either direct recruits are not available or there is no candidate available for appointment either by transfer or deputation, in that eventuality the vacancies can be filled up either on *ad hoc* basis or by way of promotion (provided there is a promotional avenue available) or by way of provisional transfers. As regards the relaxation, I am of the view that the same can only be accorded in those cases where there are persons available on the feeder posts, but owing to lack of their eligibility for promotion are not being promoted while at the same time, promotional posts are lying vacant and the Department is suffering for lack of candidates fulfilling eligibility requirements, then in such a scenario discretion has been given under Rule 18 *ibid* to make appointments on the promotional posts by relaxation.

8. Having opined thus, let us now test the case of the petitioners seeking promotion which substantially is on two grounds; (A) that their counterparts have been accorded the promotion and they have thus been meted out with hostile discrimination; and (B) despite there being provision for relaxation, they have not been accorded the benefit of the same while keeping the promotional posts vacant.

9. The second argument first.

10. As I have already expressed herein above that in the case of Tracers, on which post the petitioners stake their claim, there is no avenue of promotion as provided in the Rules and the recruitment has been provided only either by way of direct recruitment or by way of transfer or deputation. Petitioners do not fall in any of the three categories and therefore, to claim that there should be fourth category especially created for them by virtue of their experience on a post (Ferro Khalasi) which is immediately below that of the Tracer since in course of their work, they have been assisting the Tracers as Ferro Khallasi, is beyond the domain of writ jurisdiction. It is for the State to make appropriate provision in Rules about the mode of appointment either by direct recruitment or by promotion and not for this Court to venture into the legislative domain. It was in this background that the Head of the Department i.e., Engineer-in-Chief had realized after seeing the Rules as they exist that the draft Rules were framed and it was proposed vide letter Annexure P-5 to provide promotional avenue to Ferro Khalasi to the post of Tracers. The said draft Rules were forwarded to the Government i.e., Administrative Secretary of the Department, but did not find favour with the Government, who vide communication dated 23.01.2017 (Annexure P-13) summarily conveyed to the Engineer-in-Chief that the draft Rules have been rejected. As regards the grievance of the petitioners that no reasons whatsoever have been conveyed as to why the draft Rules were not accepted by the Department, in this context, I may refer to order dated 19.04.2017 passed by my learned Brother P.B. Bajanthri (as he then was in this Court), whereby the respondents were put to notice to provide certain further information. The said order is reproduced herein below:-

“Notice of motion for 22.5.2017.

On the asking of the Court, Mr. Keshav Gupta, A.A.G. Haryana, who is present in Court, accepts notice on behalf of the respondents-State. He is hereby directed to file short reply stating therein that as to why the claim of the petitioner has been rejected without assigning any reason vide Annexure P-13. He is also directed to bring the file relating to Annexure P-13 on the next date of hearing.

Learned counsel for the petitioners is directed to supply three sets of writ papers to the learned State counsel during the course of the day.”

11. Despite a lapse of more than 5 years since no further information has come forth in any form either by way of producing the administrative file and/ or providing any further reasons with regard to the rejection of the draft Rules. In fact, the impugned order dated 27.02.2017 (Annexure P-14) is also on the dotted lines of what has been conveyed vide Annexure P-13 that the claim of the petitioners cannot be accepted in view of the rejection of the draft Rules by the Administrative Secretary. On either fronts, neither Annexure P-13 nor Annexure P-14 disclose any reasons, notwithstanding that this Court had passed orders giving specific directions to that effect. In the premise, I am also left wondering and wandering as to what transpired in the minds of the Administrative authorities so as to reject the draft Rules, given that in the entire career of Ferro Khallasi, there is no promotional avenue. Trite it is to say, that lack of promotional avenue naturally leaves an employee totally de-motivated, no matter how efficiently, diligently and loyally he worked, but yet end result, he would get no rewards whatsoever.

12. As regards the argument of the learned counsel for the petitioners on which rather over-emphasis has been laid that the petitioners have been meted out with hostile discrimination, I am unable to persuade myself to agree with the same, in view of the specific orders passed, which are contained at Annexure R-III and R-IV. Perusal of the said orders reflects that two

promotions which were made from the post of Peon and Beldar to that of Tracer were also later on found to be erroneously accorded and the same were, therefore, withdrawn. In the premise, to accord benefit to the petitioners on the ground of parity would be completely out of place, since the so-called parity itself does not exist anymore in view of the subsequent withdrawal of the promotions accorded, as aforesaid.

13. As an upshot, the order dated 23.01.2017 (Annexure P-13) cryptically conveying the recommendations of the Engineer-in-Chief is set aside with a direction that fresh speaking order be passed giving specific reasons therein by considering the circumstances as on the date when the recommendations contained at Annexure P-5 were forwarded to the Government. Needful be done within a period of 6 months from today.

14. Disposed of. In case, any favourable order is passed, benefit thereof be given to the petitioners within a period of 2 months thereafter. Alternatively, petitioners are at liberty to challenge the order so passed, if so advised.

(ARUN MONGA)
JUDGE

October 27, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No