

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CWP-246-2019 (O&M)

DECIDED ON: 9<sup>th</sup> AUGUST, 2023

NEER KUMAR AND OTHERS

.....PETITIONERS

*VERSUS*

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

**CORAM : HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. D.S. Patwalia, Sr. Advocate with  
Mr. Kannan Malik, Advocate  
for the petitioners.

Mr. Sandeep S. Mann, Addl. AG, Haryana.

Mr. Madan Pal, Advocate  
for respondent No.6.

Mr. Ashwani Talwar, Advocate  
for respondents No.7 to 10.

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**SANDEEP MOUDGIL, J (ORAL)**

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* for quashing of the memorandum dated 11.12.2018 (Annexure P-12), office memo dated 20.12.2018 (Annexure P-13) and office order dated 28.12.2018 (Annexure P-14), passed by respondents No.2 to 5, whereby, respondents had created/transferred two posts of Under Secretary/Administrative Officer from the head office cadre to the field cadre.

2. The dispute revolves around the question for adjudication in the

present petition is whether non approval/sanction by the State Finance Department/HBPE would render the decision taken by the Board of Directors in its meeting dated 20.12.2018 and subsequent order in pursuance thereof dated 28.12.2018 sustainable in the eyes of law.

3. The facts, in brief, which are to be noticed for adjudication of the present petition would culminate to say that petitioners are presently working as Superintendents, who were appointed in erstwhile Haryana State Electricity Board in Ministerial Services (Head Office cadre). There were two cadres i.e. head office cadre and field cadre. The nature, duties and conditions of both the above cadres are governed by the Recruitment & Promotion Policy dated 07.10.1978. In the year 1990, the erstwhile Haryana State Electricity Board revised the recruitment and promotion policy *qua* head office cadre vide notification dated 19.10.1990 which provided promotion from the post of Superintendent to the post of Under Secretary/Administrative Officer. In the year 1999, four companies were carved out from the erstwhile Haryana State Electricity Board and the services of the petitioners were allocated to Uttar Haryana Bijli Vitran Nigam Ltd. (for short, UHBVNL).

4. The aforesaid notification dated 19.10.1990 was further amended vide notification dated 06.07.2006 with further amendment through another notification dated 28.05.2008 to say that only Superintendent from the head office cadre were eligible for the promotion to the post of Under Secretary/Administrative Officer. However, in the case of field cadre, no such promotion was provided. On 26.05.2015 an application had been filed by Mr. K.C.Verma, Superintendent from field cadre, claiming therein promotion to the post of Under Secretary/Administrative Officer. The Chief

General Manager/Admn. UHBVNL, Panchkula, vide office memo dated 26.06.2015 intimated that Superintendent from field cadre cannot be promoted to the post of Under Secretary/Administrative Officer. Thereafter, Mr. K.C.Verma alongwith others filed CWP-354-2016, questioning therein the validity to the promotion policy dated 28.05.2008 and sought promotion as Under Secretary/Administrative Officer.

5. On being put to notice, the respondents-UHBVNL appeared and filed its reply submitting that the nature and duties of Superintendent (field cadre) are different than the cadre in head office and therefore, there cannot be any parity between both the cadres. This Court dismissed the aforesaid petition vide order dated 08.05.2017 giving liberty to the petitioner to file an application/representation before the competent authority.

6. Thereafter, Mr. K.C.Verma and others filed CWP-21045-2017 which was disposed of by this Court on 15.09.2017 with a direction to the competent authority to take a decision on the representation dated 15.05.2017. After that, Mr. K.C.Verma and others had filed another petition bearing CWP-27082-2017 seeking directions from the Court to UHBVNL to take a decision on their representation dated 15.05.2017. In the meanwhile, an order dated 01.12.2017 had been passed by the respondent-UHBVNL whereby common ministerial establishment for the posts of Lower Division Clerks (LDCs) and Upper Division Clerks (UDCs) was made for future recruitments and thus, the distinction between the head office cadre and field cadre was done away with for such posts. Pursuant to the representations given by K.C.Verma and others, UHBVNL passed order dated 16.04.2018, clearly stating that the seniority of the Superintendents in the field cadre cannot be clubbed with the Superintendents of Head Office cadre for

promotion to the post of Under Secretary/Administrative Officer.

7. It was on 10.05.2018 UHBVNL framed the recruitment and promotion policy for the clerical staff of common cadre of head office and field office. However, through memorandum/order dated 11.12.2018, respondent-UHBVNL approved two posts of Under Secretary/Administrative Officer (Chief Engineer/Operation), at Panchkula and Rohtak from head office to field cadre while cancelling the notification dated 10.05.2018. In furtherance to the memorandum dated 11.12.2018, vide order dated 20.12.2018 the Company Secretary, UHBVNL intimated the office of the Chief General Manager, Administration, UHBVNL, Panchkula the extracts of the minutes of meeting of the board of directors held on 12.12.2018 and requested for further necessary action in the matter. Thereafter, through order dated 28.12.2018 UHBVNL transferred two posts of Under Secretary/Administrative Officer (Chief Engineer/Operation), UHBVNL Panchkula and Rohtak from head office to the field office against which, the instant writ petition has been preferred.

8. Mr. D.S. Patwalia, learned Senior Counsel for the petitioners submit that the aforesaid two posts of Under Secretary/Administrative Officer had been illegally transferred from head office to the field cadre. It is further submitted that such action on the part of UHBVNL is in violation of its own Article No.42 (2) of its Memorandum & Articles of Association, which provides that Board of Directors shall refer their recommendation in matters like revision of pay scales, creation/upgradation of the posts etc. for consideration and approval to the State Finance Department/HBPE. However, it has not been done by UHBVNL. Therefore, it is prayed that the present petition may be allowed and as a result thereof the impugned orders

are liable to be quashed.

9. Learned counsel for the respondents submit that two posts of Under Secretary/Administrative Officer had been transferred from head office to the field cadre as the Board of Directors, respondent-UHBVNL, are fully competent and empowered to notify any amendment in the rules as well as transfer of posts from head office to field cadre.

10. I have heard learned counsel for the parties and with their able assistance examined the record.

11. Through memorandum dated 11.12.2018(**Annexure P-12**), UHBVNL sent its proposal to transfer two posts of Under Secretary/Administrative Officer from head office to field cadre, to the Board of Directors to consider and approve the same. The relevant extract of the same, reads as under: -

*“1. The 2 No. posts of Administrative Officer in the office of CE/OP, UHBVN, Panchkula and Rohtak will be transferred to Field Office Cadre with prospective effect.*

*2. These orders will be implemented with immediate effect and no working/retiree have right for deemed date promotion and previous benefits, if any.*

*3. The seniority list of Superintendent working in Head Office Cadre will be maintained by Chief Engineer/SE/Admn., UHBVN, Panchkula as per existing practice and seniority list of Superintendent (Field) will be maintained by CE/OP, UHBVN, Rohtak in accordance with instructions of Haryana Government Reservation Policy.*

*4. The promotion from Superintendent, Head Office and Superintendent (Field) to Under Secretary/ADO, will be made by the office of Chief Engineer/SE/Admn., UHBVN, Panchkula.”*

dated 20.12.2018 (**Annexure P- 13**) had considered and approved the proposal which reads as under: -

*.....The proposal as contained in the memorandum was considered and approved by the Board of Directors.”*

13. As a consequence of the aforesaid approval of the Board of Directors of UHBVN, through the impugned order dated 28.12.2018 (**Annexure P-14**) two posts of Under Secretary/Administrative Officer, had been transferred from head office to the field cadre, which reads as under: -

*“....In pursuance of the decision taken in the meeting of Board of Directors, UHBVN held on 12.12.2018, the 2. No. Posts of ADO (Chief Engineer/OP, UHBVN, Panchkula & Rohtak) is transferred from Head Office Cadre No. Field Cadre with following conditions: -*

- 1. The 2 No. posts of Administrative Officer in the office of CE/OP, UHBVN, Panchkula and Rohtak will be transferred to Field Cadre with immediate effect.*
- 2. This order will be implemented with immediate effect and no working employee/retiree will have right for deemed date promotion and/or any previous benefits.*
- 3. The seniority list of Superintendent working in Head Office Cadre will be maintained by CGM/CE/SE/Admn., UHBVN, Panchkula as per existing practice and seniority list of Superintendent Field Cadre will be maintained by CE/OP, UHBVN, Rohtak.*
- 4. The promotion from Superintendent, Head Office and Field Cadre to Under Secretary/ADO, will be made by the office of CGM/CE/SE/Admn., UHBVN, Panchkula.”*

14. Before adverting to the final conclusion reading to Article 42 (2) of its Memorandum & Articles of Association is of utmost essence in the

context of question involved, which stipulates as under: -

*“Board of Directors alongwith its recommendations shall refer for consideration and approval of all such matters like revision of pay scales, creation/upgradation of the posts etc. to the State Finance Department/HBPE through the administrative department which are mandatorily required to be so referred in accordance with the specific instructions issued from time to time.”*

15. In the case in hand an admitted position on record is that the Resolution and its approval by the Board of Directors has not been sent to Finance Department-HBPE, which was mandatory and obligatory on the part of respondent-UHBVNL and even for its Board of Directors to specify at the time of passing the Resolution dated 20.12.2018 (**Annexure P-13**) wherein there is deletion and creation of cadre post. No other issue arose for adjudication before this Court except the instant question, which is answered in the affirmative.

16. Accordingly, in view of the discussions made hereinabove the orders dated 11.12.2018, 20.12.2018 and 28.12.2018 (Annexures P-12 to P-14 respectively) are hereby quashed. The writ petition is allowed.

17. However, respondent-UHBVNL shall be at liberty to decide the matter afresh after following due procedure as per the service conditions governing the petitioners and the provisions of its own memorandum and Articles of Association.

18. All the pending civil misc. applications stands disposed of.

9<sup>th</sup> AUGUST, 2023  
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SANDEEP MOUDGIL  
JUDGE

Whether speaking/reasoned : Yes / No  
Whether reportable : Yes / No