

CWP-2746-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(115)

CWP-2746-2023 (O&M)

Date of decision : 18.04.2023

Bhupender Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Amit Parashar, Advocate
for the petitioner.

...

SUVIR SEHGAL, J. (Oral)

CM-6175-2023

Application is allowed as prayed for.

Government instructions dated 20.01.1998 are taken on record as
Annexure P-8.

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1. Challenge in the instant petition is to order dated 25.08.2022, Annexure P-2, whereby, claim of the petitioner for grant of annual increment on the post of Clerk has been denied.
2. In a nut shell, facts leading to the filing of the writ petition are that the petitioner was appointed as a Peon in January 2000 and promoted to the

post of Clerk in the year 2009. He was further promoted as Assistant Wasal Baki Navees (AWBN) in 2013. As he was not being promoted further, he approached this Court by filing a writ petition and during its pendency, vide order dated 23.04.2021, he was promoted as Wasal Baki Navees (WBN). However, as increments in the pay-scale admissible on the post of Clerk, were not granted, this Court vide order dated 01.06.2022, Annexure, P-1, while disposing of the writ petition, directed the respondents to decide the representation submitted by the petitioner. By impugned order, Annexure P-2, representation has been rejected by respondent No.2.

3. Counsel for the petitioner contends that the sole ground for denial of annual increment is that the petitioner had not cleared the type test within a period of one year of the date of joining on the post of Clerk. By referring to Disability Certificate, Annexure P-6, counsel for the petitioner submits that the petitioner is 60% disabled and is locomotor disabled. He urges that by instructions, Annexure P-8, Government has decided to grant exemption to the handicapped employees from the condition of passing the type test, but while passing the impugned order, Annexure P-2, these instructions have not been considered.

4. Notice of motion.

5. On asking of the Court, Mr. Pankaj Middha, Additional Advocate General, Haryana, accepts notice on behalf of the respondents. He has contended that the instructions, Annexure P-8, are not applicable to the petitioner and probably the petitioner never brought the Disability Certificate, Annexure P-6, to the notice of respondent No.2.

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6. I have heard counsel for the parties and considered their submissions.

7. State counsel is not in a position to dispute the disability of the petitioner. However, it is apparent from the impugned order, Annexure P-2, passed by respondent No.2 that neither he has noticed that the petitioner is disabled, nor there is any reference to the Government instructions, Annexure P-8. Once a benefit has been granted by the Government to handicapped employees, it is imperative upon the authority concerned to examine the applicable instructions and thereafter pass an order as to whether benefit can be extended to an aggrieved employee. This Court is of the view that as this aspect has neither been considered, nor looked into, impugned order cannot be sustained on this score alone.

8. As a result, writ petition is allowed and impugned order, Annexure P-2, is set aside. Respondent No.2 is directed to pass a fresh order after hearing the petitioner and considering the Government instructions, Annexure P-8. In case respondent No.2 finds that the petitioner is not entitled for exemption, he shall pass a speaking order giving reasons in support thereof. This exercise be carried out within a period of four months from the date of receipt of communication of this order.

9. Writ petition is disposed of.

18.04.2023

Pardeep

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes