

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

**CWP No.24555 of 2013
Date of decision : 11.01.2023**

Surinder Kumar Goel

....Petitioner

Versus

Pepsu Road Transport Corporation, Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Shvetanshu Goel, Advocate
for the petitioner.

Mr. Anupam Singla, Advocate
for respondents No.1 and 2.

None for respondent No.3.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed invoking jurisdiction under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of mandamus directing the respondent-Authorities to promote the petitioner from the post of Assistant Controller (Finance & Accounts) to Deputy Controller (Finance & Accounts) from the date of his entitlement i.e. from the date persons junior to him have been promoted.

2. The petitioner was appointed with the respondent-Corporation on 18th of December, 1979 as Assistant Storekeeper. The petitioner passed S.A.S. examination on 19th of September, 1988. He was ordered to be promoted as Section Officer vide order dated 11th of November, 1997 w.e.f. the date he became eligible i.e. 19th of September, 1988. The petitioner

further was promoted as Assistant Controller (Finance & Accounts) on 8th of November, 1994. Like the petitioner, respondent No.3 namely Satnam Singh was also promoted as Section Officer after having cleared the S.A.S. examination on 23rd of February, 1989 and was also ordered to be promoted from the date he became eligible on having qualified the examination i.e. 23rd of February, 1989.

3. Ld. Counsel for the petitioner contends that despite the fact that aforesaid Satnam Singh was borne on the Cadre of Section Officer much later than the petitioner, he was promoted as Assistant Controller (Finance & Accounts) and, thereafter, as Deputy Controller (Finance & Accounts) whereas the petitioner has been denied the same. Reference has been made to the order dated 8th of June, 2006 passed by the Chairman of the Corporation whereby denying the claim of the petitioner it was ordered as under :-

“I have carefully gone through the relevant record and the arguments/pleas taken by both Shri Satnam Singh and Sh. Surinder Kumar Goyal, ACFAs. I find that even though Shri Surinder Kumar Goyal, ASK had qualified the SAS examination on 19.09.1988 quite ahead of Shri Satnam Singh, Clerk who qualified the same on 23.02.1989 and all the officials of PRTC have been given notional promotion as Section Officer from the date of passing the SAS examination, but the notional promotion given to Shri Surinder Kumar Goyal as Section Officer is found to be patently wrong because when he had qualified the SAS examination in September, 1986, he was holding the post of ASK in PRTC and the incumbents holding this post were not eligible

for their promotion as Section Officer as per the PRTC Rules *ibid* at that time. The PRTC Rules *ibid* making the ASKs eligible for their promotion as Section Officer were amended by the Board of Directors only on 03.05.1989 and therefore, the notional promotion to any of the ASKs in PRTC who qualified the SAS examination cannot be given on any date prior to 03.05.1989. Since Shri Satnam Singh is found to have qualified the SAS examination on 23.02.1989 and subsequently given notional promotion as Section Officer from the said date, as such, he is definitely senior to Shri Surinder Kumar Goyal, who can at the must be given notion promotion from 03.05.1989 when the PRTC Rules *ibid* were amended by the Board of Directors, consequently, I find merit in the representation made by Shri Satnam Singh, ACFA and his seniority is accordingly fixed over & above Shri Surinder Kumar Goyal, ACFA.”

4. The petitioner challenged the said order in appeal. The same is stated to be pending before the Board of Directors despite the fact that the Division Bench of this Court vide order dated 11th of April, 2008 directed the Appellate Authority to decide the appeal filed by the petitioner within a period of three months.

5. Be that as it may, the petitioner retired on 31st of March, 2016. Ld. Counsel for the petitioner thus submits that the petitioner has been subjected to hostile discrimination as a person junior to him was ordered to be promoted denying the same to the petitioner.

6. Per contra, counsel for respondents No.1 and 2 submits that issue of promotion of the employees of Corporation are governed by the Pepsu Road Transport Corporation (Conditions of Appointment & Service)

Regulation, 1981 which has been framed while exercising power under Section 45 of the Road Transport Corporations Act, 1950. He refers to Regulation 12 which reads as under :-

“12. Seniority :- The seniority interse of members of service in each cadre shall be determined by the length of continuous service on a post in that cadre of the service :

Provided that in case of members recruited by direct appointment the order of merit determined by the Commission of the board may be, or other recruiting authority as the case may be, shall not be disturbed in fixing the seniority and persons appointed as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection; Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:-

- a) a member recruited by direct appointment shall be senior to a member recruited otherwise.
- b) a member appointed by promotion shall be senior to a member appointed by transfer.
- c) In the case of members recruited by promotion or transfer seniority shall be determined according to the seniority of such members in the appointments from which promoted or transferred; and
- d) In the case of members recruited by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing higher rate of pay in his previous appointment and if the rates of pay drawn are also the same, then by their length of service, those appointments; and if the length of service is also the same, an older member shall be senior to a younger member.”

7. Ld. Counsel for the respondent-Corporation submits that since respondent No.3 was appointed on 10th of September, 1975 as a Clerk much prior to the appointment of the petitioner as Assistant Storekeeper on 18th of December, 1979, the seniority of the petitioner even in the cadre of Section Officer and Assistant Controller (Finance & Accounts) would be covered by his continuous length of service with the Corporation.

8. I have heard counsel for the parties and have gone through the records of the case.

9. Admittedly, the seniority of the petitioner was altered vide order dated 8th of June, 2006 (Annexure P-4) which was passed on a representation made by Satnam Singh. Before passing this order no notice or personal hearing was afforded to the petitioner. State Counsel does not dispute that impugned order had civil consequences on the petitioner yet no notice was served upon him. Appeal preferred by the petitioner against the same is pending consideration since the year 2008. The deemed promotion to the petitioner w.e.f. 8th of November, 1994 was given on the basis of Civil Court Decree in his favour as is evident from Annexure P-3. Though the Rule enabling promotion of Assistant Store Keeper as Section Officer was amended only on 3rd of May, 1989 but the petitioner had qualified SAS examination on 19th of September, 1988 much prior to the date of 23rd of February, 1989 when Satnam Singh qualified the examination. Thus, once the petitioner had already fought a legal battle and was awarded fruits of a

decree vide Annexure P-3, Annexure P-4 cannot be read to the peril of the petitioner to alter the date of promotion to the post of Assistant Controller (Finance & Accounts). The petitioner thus was senior to Satnam Singh in the cadre of Assistant Controller (Finance & Accounts).

9. Trite it is that the cadre denotes various posts as enumerated in the service regulations.

10. The bare provision as contained in Regulation 12 is explicitly clear and there being no ambiguity no word can be added or subtracted therefrom. Thus, the interpretation of regulation as projected by the respondents cannot be accepted. The right of the petitioner for promotion to the cadre of Deputy Controller (Finance & Accounts) thus cannot be denied by resorting to Regulation 12 of the Service Regulations (supra). Regulation 12 rather advances the case of the petitioner. A bare perusal thereof shall reveal that 'cadre', 'post', 'service' have been used to connote different meaning. Otherwise also trite it is that 'cadre', 'post' and 'service' can't be equated. Reference can be made to law laid down by Apex Court in case of '**J.S. Yadav vs. State of U.P. and another(2011) 6 SCC 570**'. Also "cadre" is not synonymous to "service". Reliance can be placed upon **Dr. Chakradhar Paswan vs. State of Bihar and others, (1988) 2 SCC 214** wherein it was observed as under :

“...In service jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental Rule 9(4) defines the word 'cadre' to mean the strength of a service or part of a service

sanctioned as a separate unit. The post of the Director which is the highest post in the directorate, is carried on a higher grade or scale, while the posts of Deputy Directors are borne in a lower grade or scale and therefore constitute two distinct cadres or grades. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The conclusion is irresistible that the posts of the Director and those of the Deputy Directors constitute different cadres of the Service.”

11. In view of the aforesaid facts and the law, the impugned action of the respondents cannot be sustained. Consequently, the present writ petition is allowed. The petitioner is held entitled for promotion from the date his junior i.e. respondent No.3 was promoted and would be entitled for all consequential benefits along with interest @ 8% per annum.
12. Ordered accordingly.

January 11, 2023

Dpr

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No