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

**(101) CWP-6195-1993 (O&M)
Date of Decision : August 09, 2024**

Satyabir Singh .. Petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jai Vir Yadav, Sr. Advocate, with
Mr. Nitish Sharma, Advocate and
Ms. Sunita Shekhawat, Advocate, for the petitioner.

Mr. Saurabh Girdhar, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-8377-CWP-2014 and CM-5458-CWP-2015

Reply to the application has been filed in the Court today and the same is taken on record. Copy of the same has been furnished to the counsel opposite.

Keeping in view the averments made in the applications, which are duly supported by an affidavit, the applications are allowed. Additional affidavit as well as Annexures A-1 and A-2 are taken on record.

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1. In the present writ petition, the grievance being raised by the petitioner is that the petitioner should be sent to the Basic Radio Technical Course, which is going to start in the month of June, 1993 as his juniors

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have already been deputed to pass the said course and thereafter promoted as ASI with the further prayer that after the passing of the said course, the petitioner be promoted from the date the juniors have been promoted.

2. As per the averments made in the petition, the petitioner was enrolled in the Police Department on 13.10.1973. While working as a Wireless Operator, the petitioner was transferred to telecom cadre/wing on 01.09.1988. The petitioner on the basis of his seniority was promoted as a Head Constable in the year 1989 but without passing of the Basic Radio Technical Course. In order to get further promotion, the Basic Radio Technical Course was required to be passed.

3. In the year 1989, the private respondents who are working in the Operating Cadre, were transferred to the technical cadre. The petitioner remained working in the Operating Cadre and the private respondents were transferred in the technical cadre and were working there.

4. The petitioner submitted a representation on 11.05.1991 (Annexure P-3) that he should also be deputed to the Basic Radio Technical Course but of no avail.

5. On 04.02.1992, certain Head Constables were promoted to the post of ASI and the petitioner was not promoted and again, the petitioner submitted a representation that he should be sent for Basic Radio Technical Course. The respondents were not sending the petitioner to the Basic Radio Technical Course, as the same was to be done only qua the employees who are working in the technical cadre and not in the operating cadre. Feeling aggrieved, the petitioner ultimately filed the present writ petition that he should also be sent to the Basic Radio Technical Course.

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6. After notice of motion, keeping in view the order passed by this Court, without prejudice to the claim in the writ petition, vide order dated 02.11.1994, the petitioner was directed to be sent to the Basic Radio Technical Course but with the clear condition that the passing of the said course will not confer any benefit upon him or the same will be done without prejudice to any seniority of the already promoted officials.

7. During the interregnum, it has come on record that though the petitioner appeared in the said Basic Radio Technical Course but he could not clear the same despite various chances upto the year 2002. After the year 2002, when the petitioner passed the said course, he was also considered for promotion in the technical cadre and was granted the said promotion from the year 2006. The prayer of the petitioner is that once the petitioner had already passed the Basic Radio Technical Course, he should be granted promotion w.e.f. the date employees junior to him were promoted with all consequential benefits.

8. Learned counsel for the respondents submits that keeping in view reply filed that respondents No.4 to 11 were converted as technician on 25.01.1989 (Annexure P-2) by the Board constituted under the Rules and the petitioner never applied of the said conversion and it was only in the year 1991, he submitted an application, which could not have been entertained, no grievance can be raised by the petitioner as the cadre of the petitioner is operating cadre and the cadre of the private respondents is technical cadre and as there is no inter se seniority between the petitioner and the private respondents.

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9. Further, the respondents have mentioned that the promotion to the post of ASI should have only been made after a candidate passes the Basic Radio Technical Course which course the private respondents had already passed before their promotion in the year 1992 and as the petitioner was working in operational cadre and could not pass the said test despite availing various opportunities until the year 2002, the petitioner cannot claim promotion to the post of ASI in technical cadre w.e.f. the date the private respondents have been promoted.

10. Rebutting the argument of the learned counsel for the respondents, learned senior counsel for the petitioner argues that passing of the Basic Radio Technical Course is not a pre requisite for promotion and the same can be passed at any given point of time even after the promotion and therefore, the petitioner is entitled for promotion as ASI in technical cadre w.e.f. the date the private respondents have been promoted.

11. I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. The first question which arises is whether, the petitioner can claim the benefit of promotion as ASI in technical cadre which has been extended to the private respondents.

13. It may be noticed that the private respondents were brought from operating cadre to technical cadre vide Annexure P-2 in the year 1989. Even in the writ petition, there is no challenge to the said order by which, the private respondents were brought to the technical cadre for further promotion as ASI in the said cadre. In the absence of any challenge to the said action of the respondents, the petitioner cannot claim that he also be

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treated in the technical cadre. No order passed by the competent authority so as to bring the petitioner into the technical cadre has been brought on record. Even the Basic Radio Technical Course which the petitioner underwent was under the interim orders of the Court wherein, it was duly mentioned that the same will not confer any right. In the absence of any challenge to the said order Annexure P-2, by which the cadre of the private respondents was converted from operating cadre to the technical cadre, the petitioner cannot claim that the petitioner is senior in any manner to the private respondents who are working in a technical cadre whereas the appointment of the petitioner remained in the operating cadre. Hence, the claim that the employees junior to him have been promoted as ASI, cannot be accepted so as to grant him promotion as ASI in technical cadre from the year 1992.

14. Even otherwise, the petitioner for the first time, gave his option to be brought into into the technical cadre in the year 1991. The said application was never accepted which action was never challenged by the petitioner at any given point of time. Even in the writ petition, the prayer of the petitioner is to send him to the Basic Radio Technical Course. That course the petitioner competed under the interim orders of the Court only.

15. It may be noticed that the petitioner never cleared the said course despite chance given by this Court for a period of eight years of filing the present writ petition. The petitioner appeared on various occasion to clear the said course but only completed the same in the year 2002 and keeping in view the fact that the petitioner wanted to come to the technical cadre, after the clearing of the said course, the petitioner has also been

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promoted ASI in the year 2006.

16. Not only this, in paragraph 12 of the reply, the respondents have mentioned that the seniority of the employees working in the technical cadre and operating cadre, is different. Once, the seniority is being maintained differently of the employees working in the operating cadre and technical cadre and the petitioner remained the part of the operating cadre, he cannot claim seniority over the employees working in the technical cadre so as to claim promotion as ASI with retrospective effect.

17. At the cost of repetition, it may be again noticed that there is no challenge to the absorption of the private respondents in the technical cadre at the hands of the petitioner and there is no order even as of now, absorbing the petitioner in the technical cadre and the petitioner remained the part of the operating cadre only hence, the claim of the petitioner that he should be treated senior to the private respondents who are working in a different cadre, cannot be accepted. Hence, once there is no inter se seniority between the petitioner and the private respondents, the claim of the promotion as ASI w.e.f the date the private respondents have been promoted, does not exist.

18. Qua the prayer of allowing him to pass the Basic Radio Technical Course, the same has already been allowed by this Court and the petitioner has already passed the same in the year 2002 and has been given promotion as ASI in the year 2016 and therefore, no order is required to be passed by giving the promotion to the petitioner to the post of ASI in technical cadre w.e.f. the date the private respondents have been promoted.



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19. No ground is made out for any interference by this Court in the present case.

20. Dismissed.

21. Any civil miscellaneous application pending if any, also stands disposed of.

August 09, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes