

CWP-6059-1997 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

241

CWP-6059-1997 (O&M)
Date of Decision: 28.02.2024

Som Nath Nahar and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Dr. Puneet Kaur Sekhon, Advocate for the petitioners
Mr. Aman Dhir, Deputy Advocate General, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Article 226 of the Constitution of India are seeking setting aside of order dated 24.04.1997 (Annexure P-7) whereby they were reverted from the post of Superintendent Grade-II to Senior Assistant.
2. The petitioners belong to Scheduled Caste Category. Petitioner Nos.1 & 2 joined respondent as Clerk on 29.03.1969 and 01.04.1969 respectively through Subordinate Services Selection Board. They were promoted as Assistant Grade-B on 12.10.1981 and 30.10.1981 respectively, on reserve roster points. The respondent vide order dated 24.07.1995 promoted 31 employees from the post of Senior Assistant to Superintendent

Grade-I. In the said order, it was jotted down that promotion is subject to any order/direction issued by the Supreme Court in writ petitions which are pending and having direct bearing. The respondent in terms of judgment dated 01.03.1996 passed by Supreme Court in ***Ajit Singh Januja v. State of Punjab, 1996 (2) SCC 715*** read with decision of this Court in CWP No.12037 of 1995 issued a show cause notice dated 22.07.1996 (Annexure P-3) calling upon the petitioners to show cause as to why they should not be reverted as Senior Assistant. The respondent formed an opinion that promotion of reserved category candidate has been made in excess of 20% quota. The relevant extracts of the show cause notice dated 22.07.1996 read as:-

“4. In view of above judgment of the Supreme Court of India, the matter has been examined and I am of the view that you were promoted in excess of the 20% reserved quota of scheduled caste category and as such you may be reverted as Senior Assistant with immediate effect in view of the judgment of Hon’ble Supreme Court.

5. Before proceeding further, it has been desired to issue you a Show Cause Notice in the light of the judgment of Hon’ble Punjab & Haryana High Court in CWP No.12037 of 1995 filed by Sh. Joginder Singh & others, as to why you may not be reverted to the rank of Senior Assistant with immediate effect in order to promote the next available/eligible Senior Assistant belonging to general category who is senior to you in the original seniority of clerks/steno-typists. Your reply, if any, must reach me within 10 days from the issue of this letter failing which further action will be taken without waiting for your reply.”

3. The petitioner vide communication dated 23.07.1996 followed by letter dated 02.08.1996 sought some information from the respondents as well

put forth his stand to aforesaid show cause notice. The respondent by impugned order dated 24.04.1997 (Annexure P-7) reverted the petitioners on the post of Senior Assistant. The respondent formed an opinion that promotion of the petitioners was made in excess of 20% quota. The relevant extracts of the impugned order read as:

“2. In view of the above decision of Hon’ble Punjab and Haryana High Court and the decision of Hon’ble Supreme Court of India in the cases of Shri R.K. Sabharwal and Shri Ajit Singh Janjua dated 10.02.95 and 1.3.96 respectively and the Instructions issued by the Department of Welfare of SCs/BCs (Reservation Cell) vide their letter No.3/8/95-RG-3/4853, dated 10.7.95 and No.13/3/96- RC III/8804, dated 9.10.96, the case of giving proper reservation to the members of Schedule Castes was examined and on scrutiny, Sarv Shri Bawa Ram, Som Nath Nahar, Ram Murti and Sansar Chand, Supdt. Grade-II belonging to Scheduled Caste were in excess of 20% pre-scribed quota of reservation meant for the members of Scheduled Castes.

3. Before complying with the above orders of the Hon’ble Supreme court and in view of natural justice, Show Cause Notices were given to above mentioned four Supdt. Grade-II for their reversion to the rank of Sr. Asstts. vide this office U.O. Nos. 1054/Con. SA-3, 1055/ Con. SA-3, 1056/Con. SA-3, and 1057/Con.SA-3 dated 22.7.96. The representations received from them were duly considered on the basis of facts and circumstances of the case and latest verdicts of the Hon’ble Courts and same were rejected being devoid of any force. Therefore, Sarv Shri Bawa Ram, Som Nath Nahar, Ram Murti and Sansar Chand are hereby reverted of the post of Senior Assistant from the dates they were promoted as Supdt. Grade-II (i.e. S/Shri Bawa Ram and Som Nath Nahar w.e.f. 24.7.95 and S/Shri Ram Murti and Sansar Chand w.e.f. 3.8.95). Since they had worked as Supdt. Grade-II from the dates of their

promotions, no recovery of pay etc. will be affected from them.”

4. Dr. Puneet Kaur Sekhon, Advocate submits that respondent had passed impugned order in gross violation of principles of natural justice. The petitioners were not given fair and reasonable opportunity to put forth their stand. The respondent has misplaced reliance upon judgment of Supreme Court in ***R.K. Sabharwal v. State of Punjab, 1995 (2) SCC 745; Ajit Singh v. State of Punjab, 1999 (7) SCC 209*** and ***Ajit Singh Januja v. State of Punjab, 1996 (2) SCC 715***. There were five candidates belonging to SC Category who were senior in the list of Assistant than the candidates of General Category, thus, they occupied unreserved posts of Superintendent Grade-II, accordingly, candidates belonging to Scheduled Caste Category and lower in rank became eligible for promotion against 20% reserved quota. The promotion of the petitioners, in any case, though may be in excess of quota ought to have been protected.

5. *Per contra*, Mr. Aman Dhir learned State counsel submits that impugned order was passed by Director General of Police and he had granted full opportunity to the petitioners before passing impugned order. Show cause notice was issued to all the candidates and they were given time to file reply. The petitioners had filed their reply, thus, there is no question of violation of principles of natural justice. The petitioners are relying upon seniority list of Assistant, however, have ignored date of joining in the department as Clerk. As per law laid down by Supreme Court, the principle of catch up is applicable. There were many candidates belonging to General Category who

joined department as Clerk much prior to Reserved Category candidates, however, on account of extraordinary promotion of candidates of SC Category, became Assistant after quite long time than candidates of Scheduled Caste category. As per judgments of Supreme Court, General Category candidates who were senior to SC candidates in the seniority list of Clerks were supposed to be shown senior in the list of Assistants after their promotion though took place later than promotion of SC candidates. Accordingly, the matter was reconsidered and it was found that SC candidates have been promoted more than their quota, thus, they were reverted.

6. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

7. The conceded position emerging from the record is that petitioners joined respondent-department as Clerks and they were promoted on the post of Assistant. The candidates belonging to SC category were promoted from the post of Clerk to Assistant much prior to promotion of General Category candidates on account of extraordinary promotion. They all were entitled to further promotion as Superintendent Grade-II. The respondent by order dated 24.07.1995 (Annexure P-1) promoted various candidates from the post of Senior Assistant to Superintendent Grade-I. As per said order, various candidates belonging to SC category occupied seats of General Category besides seats reserved for SC category. This resulted in occupying of seats by Scheduled Caste candidates more than 20% quota. The respondent in view of judgments of Supreme Court issued show cause notice to the petitioners calling upon them to show cause as to why they should not be

reverted. The petitioners filed reply to show cause notice and respondents by impugned order reverted them.

8. From the perusal of written statement, it comes out that many employees joined as Clerks and a seniority list of Clerks was maintained. Many candidates belonging to reserved category came to be promoted on the post of Assistant much prior to their seniors belonging to General Category. In the seniority list of Assistants, many candidates of SC Category became seniors to General Category candidates though they were junior in the seniority list of Clerks. For the sake of convenience, relevant extracts of reply are reproduced as below:-

“In order to give the clear position regarding the seniority of 4 senior supdts, belonging to reserve category in the rank of clerks in which they were initially appointed the following particulars are given in respect of 4 senior most candidates mentioned by the petitioners in their petition and their seniors belonging to general category who were given promotion later on:-

Sr. No.	Name of official	Sr.No. as Clerk	Dt. of appointment as clerk on regular basis	Dt. of appointment as Asstt. 'B' Grade	Dt. of appointment as Asstt. 'A' Grade	Dt. of appointment as Supdt. Grade-II	Dt. of appointment as Supdt. Grade-I
1.	S/Shri Darshan Singh (SC)	96	12.7.66	11.9.74	1.3.77	24.7.95	15.3.96
	Om Parkash Gulati (Genl	95	14.4.66	7.2.83	-	24.7.95	-
2.	Dass Singh (SC)	79	26.4.65	23.4.74	4.1.77	24.7.95	-
	Devinder Kumar Gupta (Genl)	76	7.4.65	23.10.81	-	24.7.95	-

3.	Gurdev Singh (SC)	85	17.6.65	11.9.74	24.2.78	24.7.95	-
	Yashbir Singh Bawa (Genl)	80	8.4.65	29.10.81	-	24.7.95	-
4.	Hans Raj (SC)	75	5.8.65	31.3.76	13.4.79	24.7.95	-
	M.M. Kalia (Genl)	73	5.4.65	3.10.78	-	24.7.95	-

In view of the above S/Sh. Darshan Singh, Dass Singh, Guirdev Singh and Hans Raj were given accelerated promotion to the rank of Asstt. And they have gained seniority over and above the general category candidates who were otherwise senior to the petitioner to and other Scheduled Caste Category employees.

In para No.3, the petitioners have mentioned the names of 4 officials i.e. S/Sh. Ram Paul, Gian Chand, Hari Bhagwan Kohli and Ram Chand. In this connection it is submitted that out of the above mentioned 4 officials, S/Sh.Ram Paul, Gian Chand and Hari Bhagwan Kohli were holding the post of Supdt. Grade-I when the orders of reversion of petitioners were passed. Sh. Ram Chand mentioned at Sr. No.4 had retired on superannuation from the post of Supdt. Grade-II on 31.10.94. Moreover, it is stated that they are much senior than S/Sh. Darshan Singh, Dass Singh, Gurdev Singh and Hans Raj as is evident from the service particulars of the said 8 officials:-

Sr. No.	Name of official	Sr.No. as Clerk	Dt. of appointment as clerk on regular basis	Dt. of appointment as Asstt. 'B' Grade	Dt. of appointment as Asstt. 'A' Grade	Dt. of appointment as Supdt. Grade-II	Dt. of appointment as Supdt. Grade-I
1.	S/Shri Darshan Singh (SC)	96	12.7.66	11.9.74	1.3.77	24.7.95	15.3.96
2.	Dass Singh (SC)	79	26.4.65	23.4.74	4.1.77	24.7.95	-
3.	Gurdev Singh (SC)	85	17.6.65	11.9.74	24.2.78	24.7.95	-

4.	Hans Raj (SC)	75	5.8.65	31.3.76	13.4.79	24.7.95	-
5.	Ram Paul (Genl)	15	20.2.62	-	16.2.78	27.8.91	12.4.96
6.	Gian Chand (Genl)	18	21.12.62	5.3.76	7.2.78	23.8.91	15.3.96
7.	Hari Bhagwan Kohli (Genl)	20	7.1.63	5.9.75	31.1.78	23.8.91	15.3.96
8.	Ram Chand (Genl)	16	16.7.62	1.8.75	27.11.78	23.8.91	-

In view above, there is no force in the contention of the petitioners that S.Sh. Darshan Singh, Dass Singh, Gurdev Singh and Hans Raj were promoted on seniority-cum-merit. Actually they gained accelerated promotion in accordance with the reservation policy.”

9. The petitioners have concededly retired in 2007 and candidates belonging to General Category have also retired. The seniority and promotion of petitioners is not going to affect seniority of all those candidates who have already retired. The pension of retirees belonging to general category can also not be altered at this belated stage. Judgments of Supreme Court in **Ajit Singh Januja (supra)**, **R.K. Sabharwal (supra)** and **Ajit Singh (supra)**, the seniority lists of all candidates as Clerks and Assistants, need to be examined to determine claim of the petitioners. Neither seniority lists are available on record nor other candidates are impleaded as respondents, thus, this Court cannot determine status of the petitioners.

10. In view of above discussions and findings, this Court is of the considered opinion that it would be in the interest of justice and fitness of things, if competent authority re-examine the matter in the light of afore-cited judgment as well as seniority list of all the candidates as Clerk as well as

Assistants. Let the needful be done within 6 months from the date of receipt of certified copy of this order.

11.
- Disposed of in above terms.
12.
- Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

28.02.2024
Mohit Kumar

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