



CWP-15408-2022

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

243

CWP-15408-2022

Date of Decision: 11.07.2024

SHYAM SUNDER SHARMA

...Petitioner(s)

Versus

MAHARSHI DAYANAND UNIVERSITY, ROHTAK AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Sunil K. Nehra, Advocate with
Mr. Arnav Udai Singh Ahlawat, Advocate
for the petitioner.

Mr. Amit Rao, Advocate for
Mr. Anurag Goyal, Advocate
for respondent No.1.

Mr. Rohit Arya, DAG, Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

The petitioner is aggrieved against Clause 5.2 of the instructions dated 01.07.2022, Annexure P-17, and the provisional seniority list of Assistants issued by the University on that basis, dated 11.07.2022, Annexure P-21, lowering his seniority position. A direction has been sought to the University to restore his seniority by considering him senior to the private respondents.

2. The facts of the case in brief are, the petitioner was appointed as Clerk-cum-Typist as a General category candidate, vide letter of appointment dated 13.09.1991, Annexure P-1. Subsequently, respondent No.3 was appointed as Clerk-cum-Typist and respondents No.4 and 5 as Clerk under the



Physically Handicapped category/quota with effect from 16.10.1991, 24.10.1991 and 28.12.1992, respectively.

2.1 The petitioner met with an accident in September, 1994 and his right leg had to be amputated. He became permanent disabled to the extent of seventy per cent, as certified by the competent medical authority vide certificate dated 17.01.1995, Annexure P-2. The University issued final seniority list of Clerk, Clerk-cum-Typist, Steno-Typist, Receptionist and Junior Store Keeper, dated 23.05.2001, Annexure P-3, wherein the petitioner was placed at serial no.537, and respondents No.3 to 5 below him at serial nos. 541, 568 and 587, respectively. Being senior to the private respondents, he was promoted as Assistant with effect from 05.06.2013. Private respondents No.3 to 5 were promoted as Assistant later, from 05.07.2013, 01.12.2013 and 01.04.2014, respectively, and were placed at serial nos.298, 323 and 338, respectively, in the seniority list of Assistants dated 30.04.2015, Annexure P-3A; whereas the petitioner was placed at no.293.

2.2 Meanwhile, the Central Government notified Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (for short, 'the 1995 Act') with effect from 01.01.1996, providing reservation in direct recruitment for persons with disabilities (PwD). Later, the State Government issued instructions dated 17/19.04.2017, Annexure P-4, providing three per cent horizontal reservation for direct recruitment as well as promotion for Group A, B, C and D posts for Persons with Disabilities with effect from the date the 1995 Act was enforced, on the posts identified for them. These instructions were adopted by University vide Executive Council (EC) Resolution dated 01.07.2017, Annexure P-6.



2.3 Pursuant to the instructions providing reservation in promotion to persons with disabilities, the petitioner as well as the private respondents were considered for the same; the petitioner had suffered disability during service in September, 1994, and the private respondents were directly recruited under the Physically Handicapped category/quota. Accordingly, they were recommended for notional promotion as Assistant; the petitioner against roster point 67 with effect from 30.12.2008, respondent No.3 against roster point 101 from 15.06.2009, respondent No.4 against roster point 167 from 27.05.2011, and respondent No.5 against roster point 201 from 17.12.2012. This was on the basis of recommendations of a committee constituted by the Vice Chancellor to identify posts in the establishment which could be held by persons with disabilities. Its recommendations and minutes dated 08.06.2020, Annexure P-11, were approved by the Vice Chancellor on 31.08.2020.

2.4 The Government again issued instructions dated 01.07.2022, wherein guidelines were issued to grant benefit of three per cent horizontal reservation in promotion to persons with disabilities under the 1995 Act, from 01.01.1996 to 18.04.2017. And for four per cent horizontal reservation for persons with benchmark disability with effect from 19.04.2017 onwards, i.e., after coming into force the new Act, Rights of Persons with Disabilities Act, 2016 (for short, 'the 2016 Act'). Clause 5.2 of the instructions provided that an employee who acquired disability after entering into service would be entitled to get the benefit of reservation in promotion as a person with benchmark disability (PwBD). However, his seniority among PwBDs will be counted from the date of certification of disability to be forty per cent or more.

2.5 Relying upon the instructions, dated 01.07.2022, the University

issued the impugned revised provisional seniority list of Assistants for the

benefit of reservation in promotion to PwBD employees with effect from 01.01.1996, wherein the petitioner was made junior to respondents No.3 to 5.

The relevant extract whereof is as under:

Sr. No.	Name	D.O.B.	Initial appointment	Services regularized w.e.f.	Date of PwD certificate	Date of promotion as Assistant	D.O. Retirement
1 to 9 xxx							
10.	Balwan Singh (Respondent No.3)	04.04.1965	Clerk-cum-Typist	16.10.1991 (AN)	16.10.1991	04.07.2013	30.04.2025
11.	Ram Pyari (Respondent No.4)	12.10.1965	Clerk	24.10.1991	24.10.1991	01.12.2013	31.10.2025
12.	Geeta (Respondent No.5)	16.05.1969	Clerk	28.12.1992	28.12.1992	01.04.2014	31.05.2029
13.	Shyam Sunder (Petitioner)	05.06.1967	Clerk-cum-Typist	18.09.1991 (AN)	02.12.1994	05.06.2013	30.06.2027
14 to 19 xxx							

The PwBD employees were requested to submit their objections, if any, upto 19.07.2022.

2.6. With these facts, the petitioner approached the Court impugning the instructions dated 01.07.2022 as well as the provisional seniority list, dated 11.07.2022, issued on that basis.

3. Learned counsel for the petitioner has contended that the petitioner is senior to the private respondents, and has always been so considered by the University prior to issuance of impugned provisional seniority list. On that basis, he was promoted to the post of Assistant as well prior to the private respondents. He is a person with benchmark disability, having suffered disability while in service in September, 1994. On the date of notification of the 1995 Act, he was suffering from disability, as were the private respondents. Accordingly, he was senior to them having joined service prior in time. Clause 5.2 of the impugned instructions stipulates that seniority of an employee with benchmark disability is to be counted from the date of certification of his/her disability. Since the petitioner acquired disability after



joining the service and was disabled on the relevant date, he is to be considered senior to the private respondents who joined service later than him, though against Physically Handicapped category/quota.

4. Learned counsel for the University, on the contrary, contends that the petition is not maintainable, since it has been filed against provisional seniority list without filing any objections. He, however, does not dispute that the petitioner's seniority position has been changed therein based on Clause 5.2 of the impugned instructions. Since he was initially appointed as a General category candidate, and the private respondents as Physically Disabled category candidates whose disability had been certified prior to that of the petitioner, they would be considered senior and entitled to the benefit of reservation in promotion also on that basis.

5. Submissions made by learned counsel for the parties have been considered.

6. Undisputed facts on record are, the petitioner joined service as Clerk-cum-Typist as a General category candidate on 18.09.1991 and suffered disability while in service, as established by Medical Certificate dated 17.01.1995. Respondent No.3 entered service as Clerk-cum-Typist and respondents No.4 and 5 as Clerk, later than the petitioner, but against the Physically Handicapped category/quota. Their certification of disability is prior to the date of joining, i.e., 16.10.1991, 24.10.1991 and 28.12.1992, respectively. Although the petitioner joined service and was promoted as Assistant prior to the private respondents, he has been placed at a seniority position below them on the basis of Clause 5.2 of the impugned instructions, dated 01.07.2022.



6.1. The benefit of three per cent reservation in promotion to PwDs/PwBDs has been given in terms of the 1995 Act, as replaced by the 2016 Act, which increased it to four per cent. The former Act was enforced from 01.01.1996, and the benefit of promotion to employees has been accorded from that day only. In line therewith, the Government issued instructions dated 01.07.2022, giving three per cent horizontal reservation in promotion to PwDs/PwBDs from 01.01.1996 to 18.04.2017 under the 1995 Act, and four per cent horizontal reservation from 19.04.2017 onwards, i.e., after enforcement of the 2016 Act, and in terms thereof. Therefore, reservation in promotion for the category started from 01.01.1996. The relevant Clause 1 of the instructions, dated 01.07.2022, is as under:

1. Applicability:-

These instructions are in continuation of previous instructions bearing No.22/10/2013-1GS-III dated 25th March, 2022, vide which guidelines were issued to grant benefit of horizontal reservation in promotion @ 3% to the persons with disabilities who covered under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 w.e.f. 01.01.1996 to 18.04.2017. The new Act namely, Rights of Persons with Disabilities Act, 2016 has come into force from 19.04.2017, and earlier the benefit of reservation in promotion @ 3% was granted upto 18.04.2017, therefore, these instructions of 4% horizontal reservation shall be applicable with effect from 19.04.2017 onwards to the PwBDs who covered under this Act.



6.2. Clause 5.2 of the impugned instructions, dated 01.07.2022, based upon which the petitioner has been downgraded in the impugned seniority list, reads as under:

5.2 An employee who acquires disability, after entering into service, will be entitled to get the benefit of reservation in promotion as a PwBD. However, his seniority among PwBDs will be counted from the date of certification of his disability, i.e., disability of 40% or more in the categories covered under Section 34(1) of the Rights of Persons with Disabilities Act, 2016.

The Clause is explicit that the benefit of reservation in promotion will be admissible to; (i) a person getting benchmark disability after joining service, (ii) and his seniority among PwBDs will be counted from the date of disability. Accordingly, despite a person not joining service as a PwBD, he/she becomes entitled to the benefit on the basis of seniority from the date of certification of his/her benchmark disability.

6.3. Clause 5.2 is to be read along with Clause 1 of the Instructions, which allows reservation in promotion to employees from 01.01.1996. Whoever is PwBD on that date is entitled to the benefit, and the seniority will be determined from the date of certification of disability. Accordingly, seniority among PwBDs is relative to the employees getting entitlement to reservation, as the former gets its basis from the latter; therefore, determination of seniority in the absence of reservation is pointless. It has to be determined as on 01.01.1996, the date of extending the benefit of reservation in promotion, by looking at the employees' status on that day.

Disability acquired prior thereto cannot make an employee senior to the one who was PwBD on 01.01.1996, as that would amount to shifting the entire



exercise of determining seniority to a period when the reservation in promotion itself was not there. Once the very purpose to determine seniority was not in existence, the exercise becomes fictional and without any legal basis. To construe it from another angle, reservation in promotion is a right conferred, and determination of seniority is deciding entitlement of PwBDs to the same. The right was conferred with effect from 01.01.1996, and determining seniority from an anterior date, as has been done by the respondents in considering the petitioner junior to the private respondents, amounts to deciding upon entitlement in a vacuum, in the absence of any right; it is impermissible being without any legal basis. Such determination cannot confer any entitlement, and the private respondents cannot be considered senior on the basis of disability acquired prior to 01.01.1996, when the right to reservation in promotion itself was not there.

6.4. Accordingly, in case the date of disability is after the date of commencement of reservation benefit, i.e., 01.01.1996, it will make the employee who was PwBD on that date, senior to the one getting disability afterwards. And in case the employees were PwBDs prior to 01.01.1996, it will be irrelevant for the purpose of seniority, since their status as PwBD on 01.01.1996 will determine the seniority position for claiming the benefit of promotion in terms of the instructions.

6.5. In the instant case, undisputedly, having suffered disability prior to 01.01.1996, the petitioner was a PwBD on this date. Joining of the private respondents as direct recruits under the category prior thereto becomes irrelevant, and cannot be a basis to decide their seniority as PwBDs, as discussed hereinabove. Their status as PwBDs on 01.01.1996 will determine their seniority for claiming the benefit of promotion under the instructions.

Since on this date the petitioner was senior to the private respondents and was a PwBD as well, he will have to be considered their senior. The respondents are palpably wrong in not doing so.

7. The petition is accordingly allowed, the impugned provisional seniority list of Assistants, dated 11.07.2022, is set aside; the University is directed to frame seniority list of Assistants afresh by treating the petitioner senior to the private respondents on 01.01.1996, in accordance with law, and, accordingly, give due benefits to PwBDs on the basis of roster points. These directions are to be carried out within eight weeks from receiving a certified copy of this judgment.

(TRIBHUVAN DAHIYA)
JUDGE

11.07.2024
Ad

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>