

CWP-21553-2024

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

CWP-21553-2024**Date of Decision: 31.08.2024**

ATMA RAM

..... PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Sapan Dhir, Advocate
for the petitioner.
Mr. Krishan Kumar Chahal, Addl. A.G., Haryana.

TRIBHUVAN DAHIYA, J. (ORAL)

The petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the office order dated 21.01.2019, Annexure P-12, whereby first to third respondents/official respondents have disturbed the petitioner's seniority position without following proper procedure and in violation of service rules. Further, a writ of *mandamus* has been sought for directing the respondents to place the petitioner at serial no.1 in the seniority list of Clerk-cum-Data Entry Operator (for short, 'Clerks-cum-DEO'), above the fourth respondent, by restoring the seniority position existing prior to passing of the impugned order.

2. Succinctly, facts of the case are, the petitioner and the fourth respondent were selected and appointed as Clerk-cum-DEO in the

respondent-Polytechnic, vide letter dated 19.06.2008, in response to



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advertisement 13/2007, Annexure P-1. The petitioner was placed at no.1 in the select list and the fourth respondent at no.4. Another candidate, namely Sunil Kumar, who joined as Steno Typist along with the petitioner pursuant to the same selection, was placed in the seniority list of Steno Typist at no.1. Both the lists were approved by the Board of Governors (BoG) of the Polytechnic in its meeting held on 27.11.2009. Later, on a proposal moved by the Principal for promotion to two posts of Assistant and one post of Junior Scale Stenographer in the Polytechnic, Sunil Kumar, Steno Typist and the petitioner were promoted as Assistant vide order dated 18.09.2014.

2.1 The promotion to the post of Assistant was challenged by the fourth respondent, who was at serial no.4 in seniority, before this Court by filing Civil Writ Petition No. 5495 of 2016 titled *Anil Kumar v. State of Haryana and Others*.

2.2 During pendency of the petition, the Department thoroughly examined the issue of seniority of Clerk-cum-DEO and Steno Typist, who were selected pursuant to advertisement 13/2007. On perusal of the office records, it was found that all the four candidates had been given equal marks by the selection committee, i.e., 59 out of 100, and Sunil Kumar was recommended for the post of Steno Typist having secured 43 marks. As per Government Instructions, in the event of candidates securing equal marks in the final merit list, *inter se* seniority is to be determined on the basis of age, viz., the candidate older in age will rank senior. Following the principle, the seniority list of Clerk-cum-DEO was corrected as under:

a. Seniority of Clerk-cum-Data Entry Operator

Seniority	Name of incumbent	Date of Birth	Date of joining service
01	Surender Kumar	25.07.1977	23.06.2008
02	Anil Kumar (Resp. 4)	04.11.1978	07.07.2008
03	Atma Ram (Petitioner)	10.03.1980	25.06.2008
04	Pardeep Kumar	08.10.1984	26.06.2008

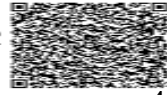


b. Seniority of Steno-Typist

Seniority	Name of incumbent	Date of Birth	Date of joining service
01	Sunil Kumar	15.05.1986	23.06.2008

2.3. In terms of Rule 9 of the Technical Education Rules, 1996, (for short, ‘the 1996 Rules’), feeder cadre for promotion to the post of Assistant is Junior Scale Stenographer, Steno Typist, Clerk, Cashier, Storekeeper (Grade 15) or Assistant Storekeeper. Accordingly, the Department framed a combined seniority list of Clerk-cum-DEO and Steno Typists, wherein the seniority position of Clerk-cum-DEO remained the same, as aforementioned, and the Steno-Typist was placed below them at no.5.

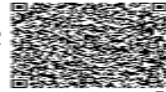
2.4. Before altering/finalising the seniority positions as aforementioned, due notice was given to the petitioner and other affected employees, and they were also heard in person on 03.12.2018. Their replies and submissions were duly considered before passing the impugned order dated 21.01.2019, assigning seniority position on the basis of merit/age of the selected candidates. Based on this corrected seniority, the fourth respondent and the petitioner were promoted as Assistant at merit no.1 and 2, respectively, and Sunil Kumar as Junior Scale Stenographer. The person at no.1 in the order of seniority, Surender Kumar, had already left the service on 30.09.2010, and accordingly was not considered for promotion. The impugned order rectifying the cadre wise seniority, and the promotions given on that basis, were brought to the notice of this Court in CWP-5495-2016 filed by the fourth respondent, which rendered the petition infructuous, and it was accordingly disposed of vide order dated 22.01.2019. This very order dated 21.01.2019, has been challenged now by the petitioner in the instant

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3. Learned counsel for the petitioner contends that the order of seniority determined by the impugned order is contrary to the merit positions assigned by the selection committee whereby the petitioner and the fourth respondent were selected as Clerk-cum-DEO, and the latter was placed at no.1 in the order of merit. He has referred to Rule 11 of the 1996 Rules to contend that for deciding seniority of direct recruits, the order of merit determined by the recruiting agency/ authority cannot be disturbed. The impugned order is contrary to the Rule and, accordingly, liable to be set aside. He also contends that after passing of this order, the petitioner made representation to the respondent-Department, dated 28.06.2021, seeking its correction, but no decision was taken/conveyed; subsequent representations by him were also not decided. Therefore, the petition deserves to be entertained.

4. Heard.

5. The petitioner has approached this Court impugning the order, dated 21.01.2019, re-determining seniority of Clerk-cum-DEO, and promoting him as well as the fourth respondent as Assistant on that basis. The petition has been filed after more than five years from the date of the order. The only clarification put forth by the learned counsel in this regard is the pending representations with the respondents which have not been decided. This is hardly an explanation. Remaining dormant for years together, awaiting decision on the representation(s), and one fine morning deciding to institute the petition without there being any change in circumstances, indicates a conduct which is not *bona fide*; rather, it shows the petitioner has not been vigilant in asserting his rights. Mere filing of representations, which statedly remained pending, will not give any fresh cause of action to the petitioner to approach this Court, that too challenging



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seniority of employees which has already been acted upon. Accordingly, there is an unexplained delay of more than five years in filing the instant petition which disentitles the petitioner from maintaining the petition on account of laches.

6. It is well settled that challenge to seniority list/ position by an employee is not to be entertained by the Courts after a delay of three to four years. The reference in this regard can be made to the judgment rendered in *Shiba Shankar Mohapatra and Others vs. State of Orissa and Others*, (2010) 12 SCC 471, holding as under:

30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *K.R. Mudgal*, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.

7. Further on merits also, this Court is not inclined to entertain the petition since it is apparent on record that all the selected candidates for the post of Clerk-cum-DEO, pursuant to the selection in question, were already given equal marks and, accordingly, their *inter se* seniority was required to be determined on the basis of age. In case that has been done by the respondents by passing the impugned order, dated 21.01.2019, no exception can be taken to it. The petitioner was heard before passing the order and his



response was duly considered. Also, based on the changed/ corrected seniority position, he was promoted as Assistant along with the fourth respondent. Accepting the promotion, he joined on the post and has been working as such ever since. At this stage, he cannot be allowed to take an about-turn and challenge that very order.

8. The petition accordingly stands dismissed *in limine*.

(TRIBHUVAN DAHIYA)
JUDGE

31.08.2024
Seema

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