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2025:PHHC:166939



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15259-2024
DECIDED ON:01.12.2025

BHIM SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Abhijeet Singh Rawaley, Advocate for the petitioners.

Mr. Deepak Balyan, Addl. AG, Haryana

SANDEEP MOUDGIL, J (ORAL)

Prayer:

1. This petition under Article 226/227 of the Constitution of India seeking Quashing of the impugned order dated 16.04.2024 (Annexure P-4) passed by respondent No.1 whereby the claim of the petitioner has been dismissed illegally and without appreciating the facts and circumstances with furthe prayer to direct the respondents to promote the petitioner as Forest Guard w.e.f. 2003 and as Forester w.e.f. 2013 under the 3% Physically Handicapped quota, with all consequential benefits including arrears, pay fixation and seniority.

Factual Matrix :

2. The petitioner is an employee of the Forest Department, Government of Haryana, and is visually impaired. He was appointed as Mali on 12.06.1998. As

per the applicable service rules, the next promotional post in the cadre is Forest Guard. The petitioner became eligible for consideration to that post in the year 2003. He was promoted as Forest Guard on 13.08.2007 after the Government granted relaxation of certain conditions prescribed under the Rules.

3. The next promotional post in the hierarchy is Forester. Under the Haryana State Forest Employees Group 'C' Service Rules, the post requires ten years' experience as Forest Guard and completion of Forest Guard training. The petitioner became eligible for consideration in the year 2013. On 23.11.2021, the Government granted relaxation from the mandatory training requirement, and he was promoted as Forester with effect from the same date.

4. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short as 1995 Act) provides for 3% horizontal reservation, including 1% for persons with blindness or low vision. The State Government issued instructions dated 11.07.2023 providing that reservation in promotion for persons with disabilities would apply for the period from 01.01.1996 to 18.04.2017.

5. Earlier, in CWP No. 15215 of 2023, this Court permitted the petitioner to submit a representation before the competent authority regarding his claim for promotion from the dates of eligibility. The representation dated 25.09.2023 (Annexure P-3) was considered by the Additional Chief Secretary, who, by order dated 16.04.2024 (Annexure P-4), declined to grant retrospective effect to the petitioner's promotions. The order records that the relaxations granted by the Government operated prospectively and that field-level posts in the Forest Department require physical fitness and visual capacity.

6. The present writ petition challenges the order dated 16.04.2024 (Annexure P-4) and seeks directions for grant of promotion to the posts of Forest Guard from 2003 and Forester from 2013, together with consequential benefits.

Contentions:

On behalf of the petitioner:

7. Learned counsel appearing on behalf of the petitioner has submitted that the statutory framework under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 mandates reservation in promotion for persons with benchmark disabilities and that 1% of the quota is earmarked for persons with blindness or low vision. It is urged that the petitioner was the only visually impaired employee in the feeder cadre and that the benefit of reservation should have been extended from the dates on which he first became eligible for consideration, namely the years 2003 for the post of Forest Guard and 2013 for the post of Forester.

8. It is further submitted that the instructions issued by the Government of Haryana on 11 July 2023 for grant of reservation in promotion under the 1995 act expressly stipulate that horizontal reservation in promotions for persons with disabilities who are covered under the 1995 Act for the period from 01.01.1996 to 18.04.2017 as envisaged under the Rights of Persons with Disabilities Act, 2016 (in short as 2016 Act).

9. It is urged by the learned counsel for the petitioner that once the instructions recognised the retrospective applicability of the reservation, the authorities were required to consider his case from the relevant dates, and the subsequent grant of promotion in the year 2007 and the year 2021, after relaxation

of certain conditions, cannot curtail the statutory and constitutional entitlement to be considered against the disability quota.

10. Learned counsel contended that the requirement of physical standards and training, referred to in the service rules, cannot be invoked to dilute the reservation provided under the statutory scheme, particularly in the absence of a notification issued under the proviso to Section 33 of the 1995 Act exempting the posts in question. It is contended that the respondents themselves have acknowledged that a proposal for exemption has only been forwarded and has not been notified, and therefore, the posts of Forest Guard and Forester continue to fall within the purview of reservation.

11. It is argued that the petitioner's case was not considered in the relevant years and that the denial of consideration from the due dates results in violation of Articles 14 and 16 of the Constitution of India. Counsel also relies upon the principle that the right to be considered for promotion is a facet of the guarantee of equal opportunity and asserts that the delay in granting relaxation cannot defeat substantive rights flowing from a beneficial statutory enactment.

12. Lastly, it is argued that the impugned order dated 16.04.2024 does not advert to the statutory scheme or the binding nature of the Government instructions dated 11.7.2023 and proceeds solely on the basis that relaxations granted to the petitioner operate prospectively rendering this reasoning legally untenable, as the failure of the authorities to consider the petitioner against disability quota vacancies in the relevant years cannot be justified by relying on subsequent administrative relaxations.

On behalf of the respondents:

13. Per contra learned counsel for the state has submitted that the posts of Forest Guard and Forester are field-level positions requiring physical fitness, mobility, and adequate visual capacity, as reflected in the service rules describing the duties and physical standards. It is stated that the petitioner being visually impaired was not eligible to meet these requirements at the time when he first became due for consideration, and that his promotions were granted only after the Government extended specific relaxations in his favor.

14. It is contended that the relaxations granted in the year 2007 and in the year 2021 operate only prospectively and cannot form the basis for claiming retrospective promotion. The State submits that the petitioner cannot seek promotion from a date on which he did not fulfill the requisite qualifications prescribed under the rules or when these qualification had not yet been relaxed.

15. Learned State counsel has further submitted that the Department has already sought exemption of certain field cadres, including Forest Guard and Forester, from the applicability of reservation for persons with disabilities, and that the nature of duties attached to these posts justifies such a request. It is urged that until such exemption is decided, the relaxations already granted constitute a special accommodation, and no further benefit from back dates is permissible.

16. It is therefore asserted that the impugned order dated 16.04.2024 has been passed after due consideration of the relevant rules and administrative instructions and does not call for interference.

17. Heard.

Analysis:

18. Having heard the submissions advanced by counsel for both parties and perusing the material placed on record, this court is of the opinion that it is

apposite to discuss the vision of the framers of laws for protection of persons with disability and the spirit of the 1995 Act and 2016 Act.

19. The disability rights regime in India must be understood not merely as a set of statutory prescriptions but as an expression of the constitutional promise of equality, dignity, and full participation. Long before the recognition of disability as a dimension of substantive equality in constitutional jurisprudence, Parliament enacted the 1995 Act. The 1995 Act marked a decisive shift from a charity-based model to one centered on equal opportunity. It imposed affirmative obligations on the State to identify posts suitable for persons with disabilities, reserve not less than 3% of vacancies, and ensure that unfilled vacancies are carried forward. These provisions reflect the understanding that equality cannot be realised unless institutions actively dismantle barriers that historically excluded specially abled persons from public employment.

20. The 1995 Act was later replaced by the 2016 Act, which represents a further evolution in legislative design. Aligned with the United Nations Convention on the Rights of Persons with Disabilities, the 2016 Act places the individual at the centre of the equality project. It incorporates the principles of *non-discrimination*, *respect for inherent dignity*, *equality of opportunity*, and *reasonable accommodation*. It requires the State to move beyond formal equality and to adopt structural adjustments that enable persons with disabilities to participate on an equal basis with others. Persons with disabilities often face exclusion not because of their physical or sensory impairments but because public institutions are organised in ways that presume able-bodied norms. The disability rights framework, therefore, seeks to correct patterns of exclusion by obligating the State to create conditions that allow specially abled persons to thrive. Guidance

may be drawn from the Supreme Court in **“Ravinder Kumar Dhariwal v. Union of India 2022 (1) SCT 254”** wherein it was observed that,

“28. Article 14 of the Indian Constitution states that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". The right to equality under the Indian Constitution has two facets - formal equality and substantive equality. While formal equality means that every person, irrespective of their attributes must be treated equally and must not be discriminated against; substantive equality is aimed at producing equality of outcomes through different modes of affirmative action. The principle of reasonable accommodation is one of the means for achieving substantive equality, pursuant to which disabled individuals must be reasonably accommodated based on their individual capacities. Disability, as a social construct, precedes the medical condition of an individual. The sense of disability is introduced because of the absence of access to facilities.”

21. Adverting to the facts of the case at hand, the issue involved is a narrow one as to whether a visually impaired employee was entitled to be considered for promotion against the 1% quota earmarked for persons with blindness or low vision under the 1995 Act, and whether such consideration ought to have been accorded from the dates on which he became eligible.

22. The material on record indicates that the petitioner became eligible for promotion to the post of Forest Guard in 2003 and to the post of Forester in 2013. It is not disputed that he was the sole visually impaired employee in the feeder cadres during the relevant period.

23. The statutory framework is clear as sections 32 and 33 of the 1995 Act impose mandatory obligations on the State for identification of suitable posts and reservation of at least 3% of vacancies (including 1% for blindness or low vision). For the sake of reference, Sections [32](#) and [33](#) of the 1995 Act, are reproduced hereinbelow :

" Section 32. Identification of posts which can be reserved for persons with disabilities.-

Appropriate Governments shall -

(a) Identify posts, in the establishments, which can be reserved for the persons with disability;

(b) At periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

Section 33. Reservation of posts.-

Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from-

(i) blindness or low vision;

(ii) hearing impairment;

(iii) locomotor disability or cerebral palsy,

in the posts identified for each disability :

Provided, that the appropriate Government may, having regard to the type of work carried on in any department or establishment by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

Moreover, in ***“Government of India & Anr. v. Ravi Prakash Gupta***

& Anr. (2010) 7 SCC 626” also, the apex Court mandated the identification of posts for purposes of reservation. Thus, what is required is identification of posts in every establishment until exempted under proviso to Section 33 of the 1995 Act.

24. Furthermore, as pointed out by learned counsel for the petitioner, the instructions issued by the State of Haryana on 11.07.2023 (Annexure P-1) expressly make horizontal reservation in promotions applicable from 01.01.1996 to 18.04.2017. Consequently, during both periods of eligibility, the reservation for persons with visual disability was operative.

25. The defence of the State that the petitioner did not meet the prescribed physical standards or training requirements also cannot stand in view of the proviso to Section 33 of the 1995 Act. Thus, if the State seeks to exclude a post from the ambit of reservation, it must do so through a notified exemption after forming an opinion that the nature of duties justifies such exclusion. No such

notification has been produced and a pending proposal for exemption does not satisfy the statutory requirement. In the absence of a valid exemption under Section 33, the reservation continues to apply in full measure.

26. It is also a matter of record that the petitioner was eventually promoted to the post of Forest Guard in 2007 and thereafter to the post of Forester in 2021, both promotions having been granted only upon relaxation of certain physical and training requirements. Subsequent to these events, the State issued instructions dated 11.07.2023, which expressly extended the benefit of horizontal reservation for persons with disabilities, including the 1% quota for individuals with blindness or low vision retrospectively to the period from 01.01.1996 to 18.04.2017. By virtue of these instructions, read with the provisions of the 1995 Act as continued and expanded under the 2016 Act, the petitioner stood fully eligible for consideration against the reserved vacancy for visually impaired persons during the years in which he first became eligible for promotion.

27. The retrospective application of these instructions removes any doubt that the disability quota ought to have been operated in the petitioner's case when the promotional vacancies arose in 2003 and 2013, and that the petitioner, being the only employee with visual disability in the relevant cadre, was entitled to consideration against those reserved vacancies.

28. This court cannot lose sight of the mandate under Article 16 of the Constitution guarantees equality of opportunity in public employment, and the right to be considered for promotion is an integral facet of this guarantee. Where a statutory reservation exists, the authorities must operate it. The record reveals no exercise undertaken by the respondents to compute or fill disability-quota

vacancies during the years when the petitioner was eligible. The omission to do so results in a clear breach of Articles 14 and 16 of the Constitution.

29. The impugned order dated 16.04.2024 (Annexure P-4) does not advert to the mandatory nature of the reservation under the 1995 Act nor to the binding instructions of 11.07.2023. It rests solely on the fact that promotions were granted on the dates of relaxation. This reasoning overlooks the statutory requirement that the disability quota must be operated annually and unfilled vacancies carried forward. Therefore the order is unsustainable in law.

30. This court is sanguine of the fact that the measure of a compassionate State is not how it treats the strong, but how it uplifts those whom circumstance has made vulnerable. When statutory rights meant to level an uneven field are allowed to wither by bureaucratic indifference, the Court must intervene not out of sentiment, but out of respect to the Constitution's ethic. Equality is not a mechanical formula but a human commitment. Therefore the law must bend toward inclusion, lest the specially-abled citizen be left standing outside the doors of opportunity to which the Constitution has already given him a key.

31. In these circumstances, the petitioner was entitled to consideration for promotion to the post of Forest Guard from 2003 and to the post of Forester from 2013 against the 1% disability quota. The denial of such consideration was contrary to statutory mandate and constitutional principle. The petitioner is accordingly entitled to notional promotion from the said dates together with consequential benefits.

Conclusion:

32. This Court recognizes that the right to be free from disability-based discrimination, as enshrined in the 2016 Act must be regarded with the same seriousness and protection as a fundamental right, ensuring that no employee is excluded from consideration solely on the basis of their disability.

33. Owing to the discussions made hereinabove, it is the view of this court that the petitioner is entitled to promotion against the 3% reservation quota for physically handicapped, and shall be accorded notional promotion to the post of Forest Guard from 2003 and Forester from 2013. The promotions shall carry consequential benefits, including fixation of pay and seniority. All financial benefits which shall accrue to the petitioner will carry interest at 6% per annum from the date it became due till the date of its realization.

34. The respondents are directed to implement these directions within 4 weeks and the impugned order dated 16.04.2024 (Annexure P-4) is hereby set aside.

35. The present writ petition is allowed. Ordered accordingly.

01.12.2025

sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*