HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-11114-2001 (O&M)
Decided on 30.01.2026

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Tek Chand Jain ... Petitioner

VS.

State of Haryana & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Tapan Kumar Yadav, Advocate for
Mr. Jai Veer Yadav, Advocate for the petitioner

Mr. Ravi Dutt Sharma, DAG Haryana

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Sandeep Moudgil, J.

(1). The present writ petition has been filed under Articles 226/227 of the Constitution of India, *inter alia*, seeking issuance of a writ in the nature of certiorari for quashing the order dated 05.01.2001 issued on 08.01.2001 passed by respondent No.2 (Annexure P4) to the extent it declines the benefit of service rendered by him in the office of Excise and Taxation Commissioner from 27.12.1973 to 08.07.1974 and assign him seniority by counting that service.

(2). Learned counsel for the petitioner submits that the petitioner was selected by the Subordinate Services Selection Board, Haryana on a substantive post of Clerk and joined his duties on 27.12.1973 in the Excise and Taxation Department, Chandigarh. It is submitted that the request for transfer made by him on 07.06.1974 on ground to look after his ailing father and the same was declined by respondent No.2, however, later on he was transferred to Rewari by the Department at their own on 05.07.1974. He was thereafter promoted as Assistant vide order dated 06.05.1997.

(3). It is further submitted that the petitioner made several requests for assigning him seniority in the head office at Chandigarh to which the petitioner even submitted his objections before finalization of the seniority of District Clerical Cadre, on 17.10.2000 (Annexure P3). However, respondent No.2 vide order dated 05/08.01.2001 (Annexure P4) declined to accede to the request of the petitioner for giving similar treatment of benefit of service rendered in the head office at Chandigarh as was given in case of Anand Singh Dahiya. He pointed out that Anand Singh Dahiya joined as Clerk in Advocate General, Haryana but was later on transferred to Excise and Taxation Department and his services rendered in the previous department has been counted by the Department but has been wrongly denied to the petitioner.

(4). Written statement dated 13.11.2001 has been filed by OP Sheoran, Additional Excise and Taxation Commissioner (Admn.), Haryana on behalf of respondents No.1 to 3 wherein it has been averred that the petitioner's requests for transfer made on 25.04.1974 and 05.06.1974 were never declined but was kept pending till the ban for transfer was lifted which was however, acceded to on 05.07.1974/08.07.1974 and the petitioner was transferred subject to approval of the Secretary, SSSB, Haryana (which was granted on 06.11.1979 Annexure R8) and expressly stating that his lien would not be retained in the head office cadre as his transfer had been made at his own request. He submits that the petitioner never raised any objection at the time of his transfer and accepted his transfer and consequently joined in the office of Deputy Excise and Taxation Commissioner at Rewari on 12.07.1974.

(5). Learned counsel for the respondents contends that the transfer was sought by the petitioner on the ground of taking care of his ailing father and now he cannot turn around and take a contrary stand for the purpose of seniority in the head office. It is then submitted that as per Rule 11 of the Haryana Excise and Taxation Department Subordinate Offices Ministerial (Group C) Services Rules, 1981 (in short, 'the 1981 Rules'), the seniority inter se members of the service shall be determined by the length of continuous service on any post in the service and as such, the seniority can be given to the petitioner from the date of joining in the Deputy Excise & Taxation Commissioner, Rewari.

(6). As regards counting of service rendered Anand Singh Dahiya in the Advocate General Office and later transferred to Excise and Taxation Department, learned counsel for the respondents submits that his representations for counting of service were rejected, however, in view of Rule 17 of the 1981 Rules, his case was re-considered at the level of Government and it was decided that the benefit of past service rendered by Anand Singh Dahiya in the office of Advocate General, Haryana from 15.10.1971 to 02.02.1976 may be given towards seniority.

(7). Heard learned counsel for the parties.

(8). It is the stand of the respondents that since the petitioner was transferred from the head office at Chandigarh to Rewari on his own request and his lien was not retained in the head-office cadre, he is not entitled to count the service rendered by him at Chandigarh for the purpose of seniority. It is not in dispute that the petitioner had been appointed as Clerk on a substantive post through the Subordinate Services Selection Board, Haryana, and had actually served in the office of the Excise and Taxation Commissioner, Haryana, Chandigarh, from 27.12.1973 to 08.07.1974, before his transfer to the office of the Deputy Excise and Taxation Commissioner, Rewari on 08.07.1974. This spell of service is regular and qualifying service in the very same ministerial service. It is not the case of the respondents that his appointment was either *ad hoc* or otherwise *de hors* the Rules.

(9). It is true that the order of transfer records that the transfer was being made on the petitioner's own request and that his lien in the head-office cadre would not be retained. The legal consequence of a "request transfer" and of such a recital, however, is limited inasmuch as the employee cannot claim a right to continue in, or revert back to, the earlier cadre or unit, and may, consistent with the service rules, be placed at the bottom of the seniority list of the new unit. In the absence of an express statutory provision, such a condition cannot be construed to mean that the period of substantive regular service already rendered in the same ministerial service prior to such transfer stands wiped out or becomes non-existent for all intents and purposes of seniority.

(10). Rule 11 of the 1981 Rules, in terms provides that the seniority *inter se* members of the service shall be determined by the length of continuous service on any post in the service, and the expression "any post in the service" plainly takes within its ambit posts born on the same ministerial service whether at the head office or in subordinate offices. Rule 11 of 1981 Rules is reproduced as under:-

> *"11. Seniority, interse of the members of the Service shall be determined by the length of continuous service on any post in the Service;*
>
> *Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre;*

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the Commission, shall not be disturbed in fixing the seniority:

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:-

(a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;

(b) a member appointed by promotion shall be senior to a member appointed by transfer;

(c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred ; and

(d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same, then by the length of their service in the appointments and if the length of such service is also the same, the older member shall be senior to the younger member.

(11). Viewed thus, the petitioner's service from 27.12.1973, when he joined as Clerk in the head office, till his transfer and joining at Rewari, constitutes one continuous spell of service on a post in the same service within the meaning of Rule 11, and there is no rule brought to the notice of this Court which mandates that, in cases of transfer on own request with non-retention of lien, the earlier segment of service must be ignored for seniority. An employee transferred on his own request to a different cadre or unit cannot carry his previous seniority into the new cadre proceeds on the footing that seniority in the new cadre cannot be fixed to the detriment of existing incumbents by importing seniority from an entirely distinct cadre. The present case stands on a different footing, inasmuch as the petitioner is not seeking to import seniority from one distinct service to another, but only insists that the period of regular, substantive service already rendered by him in the same ministerial service be counted as part of his "continuous service" for determining his place in the seniority list.

(12). In this context, it is also material to notice the scheme of Rules 3.14 and 3.15 of the Punjab Civil Services Rules (in short, 'the 1959 Rules'), which govern lien of a Government servant on a substantive post. Under Rule 3.14(a)(2), where a Government servant is appointed in a substantive capacity to another permanent post, the competent authority is required to suspend his lien on the original post. Rule 3.15(b) of the 1959 Rules then mandates that in such a case the suspended lien may not, <u>except on the written request of the Government servant concerned</u>, <u>be terminated</u> while the Government servant remains in Government service. In cases covered by Rule 3.14(a)(2), termination of a suspended lien is permanently precluded unless and until a written request to that effect is received from the Government servant.

(13). In the present case, there is no material to show that the petitioner ever made any written request under Rule 3.15 of the 1959 Rules for termination or surrender of his lien on the substantive post of Clerk in the Excise and Taxation Department but it is only in the transfer order which recites that his lien in the head-office cadre would not be retained. Such a recital, without a written request by the petitioner as contemplated by this Rule, cannot, by itself, bring about termination of his lien in law, nor can it be treated as a deemed surrender of all incidents of the substantive post so as to justify ignoring the period of service already rendered by him on that post for purposes of seniority. Reference can safely be made to ***State of Haryana vs. Shri Des Raj Sangar & Anr. (1976) 2 SCC 844*** wherein the Supreme Court held that in the absence of written request by the employee under Rule 3.15 of the 1959 Rules, lien on the post permanently held by him cannot be terminated. The relevant extract of the said judgment read as under:-

> *"8. There appears to be, however, considerable force in the second contention advanced on behalf of the respondent that on the abolition of the post of Panchayati Raj Election Officers, his services should not have been terminated. According to clause (a) (2) of Rule 3.14 of Punjab Civil Services Rules Vol. 1 Part I as applicable to Haryana State a competent authority shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne. According to clause (e) of that rule, a Government servant's lien which has been suspended under clause (a) of that rule shall revive as soon as he ceases to hold a lien on the post of the nature specified in sub-clauses (1), (2) or (3) of that clause. The above provisions were considered by us in the case of T. R. Sharma v. Prithvi Singh. Civil Appeals Nos. 354 and 355 of 1971 decided on 17-11-1975= (reported in AIR 1976 Supreme Court 367) and it was held that in the absence of a written request by the employee concerned, the lien on the post permanently held by him cannot be terminated. It is nobody's case that any written request was made by the respondent for terminating his lien on the post of Head Assistant. As such the lien of the respondent on the post of Head Assistant should be held to have immediately revived as soon as the post of Panchayati Raj Election Officer was abolished."*

(14). Moreover, in the case of Shri Anand Singh Dahiya, the Government, by invoking Rule 17 of the 1981 Rules, has consciously decided to count his past service rendered in the office of the Advocate General, Haryana, from 15.10.1971 to 02.02.1976, towards his seniority in the Excise and Taxation Department, although that past service was not even within the Excise and Taxation Department. Once such benefit of past service has been extended on the administrative side to one employee purportedly by invoking Rule 17 of the 1981 Rules, in that eventuality, denial of similar, and indeed stronger, benefit to the petitioner, whose past service is within the same department, governed by the same Rules and the same ministerial service, becomes arbitrary and violative of Articles 14 and 16 of the Constitution of India.

(15). The principle enunciated by the Constitution Bench of the Apex Court in ***Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra, (1990) 2 SCC 715***, fortifies the petitioner's claim for counting his service from 27.12.1973 to 08.07.1974 for the purpose of seniority. In the said decision, the Supreme Court held, inter alia, that where an appointment is made in accordance with the rules applicable to substantive appointments and the appointee continues to hold the post uninterruptedly, the entire period of such continuous service cannot, in the absence of a valid rule-based justification, be excluded from reckoning for seniority, and that any such exclusion would be arbitrary and offend Articles 14 and 16 of the Constitution.

(16). Accordingly, this writ petition is allowed and the order dated 05.01.2001 issued by the respondent No.4 only to the extent declining benefit of past service rendered by the petitioner in the same Department from 27.12.1973 to 08.07.1974. The respondents are directed to re-frame the seniority list and grant all necessary consequential service/retiral benefits to the petitioner and arrears thereof shall be disbursed to the petitioner along with interest @ 6% p.a. within *two months* from the date of receipt of certified copy of this order.

30.01.2026
V.Vishal

(Sandeep Moudgil)
Judge

*1. Whether speaking/reasoned? : **Yes/No***
2. Whether reportable? : Yes/No