

(2010) 03 P&H CK 0067
In the Punjab And Haryana At Chandigarh

Ashok Kumar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Citation : (2010) 159 PLR 283

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—The prayer in the present writ petition is for issuance of a writ in the nature of certiorari for quashing of the letter dated 26.07.1995 (Annexure P-4), vide which the petitioner had been refused to compete in the promotional test to be conducted by respondents.

2. Counsel for the petitioner contends that the petitioner was appointed after a regular selection process as temporary Assistant Sub Inspector (Clerk) with effect from 25.09.1989. He continued to serve respondents as such. From the very beginning, he was granted regular pay scale of the post on which he was appointed. He took a typing test and cleared the same on 26.10.1994. Thereafter, on 21.07.1995, the petitioner made an application for taking promotional test. The said application of the petitioner was rejected by respondents, vide Order dated 26.07.1995 (Annexure-P-4), stating therein that since the petitioner had qualified the typing test on 26.10.1994, he would be deemed to have been appointed on regular post as he was appointed as Assistant Sub Inspector (Clerk) on regular basis with effect from 26.10.1994. As he had not completed the period of five year of service from the date of his clearing the typing test, he was held not entitled to take the promotional test.

3. Counsel for the petitioner contends that the denial of the petitioner to take promotional test is not in consonance with the Rules as the requirement of the Rules is that he should be having five years regular service in the pay scale,

which the petitioner had from the very outset, when he was appointed as a Assistant Sub Inspector (Clerk), he was given regular pay scale. He on this basis submits that the impugned Order deserves to be set aside and the petitioner should be held entitled to take promotional test from the date he had completed five years of service from the initial date of his appointment.

4. On the other hand, counsel for respondents submits that five years regular service is to be taken into consideration from the date of his passing the typing test. He contends that the petitioner was appointed as Assistant Sub Inspector (Clerk) on temporary basis on a temporary post, which was likely to be made permanent in due course. The appointment letter, clause 3 thereof clearly spelt out the terms of his appointment. Clause 3(a)(i) and (ii) would be relevant. According to Sub-clause (i), the appointment was purely temporary and could be terminated at any time by one month's notice given by either side. As per Sub-clause (ii), the appointment letter would be provisional subject to the petitioner passing typing test at the speed of 30 Words Per Minute in English or 23 Word Per Minute in Hindi within one year from the date of his appointment, failing which his services could be terminated without any notice. He on this basis contends that the period of regular appointment of the petitioner can be taken into consideration only from the date he had passed the typing test and not from the date of his initial appointment. His further contention is that as per the Central Reserve Police Force (Combatised Ministerial Cadre) Recruitment Rules, 1989, the eligibility to appear in the departmental test for promotion to the post of Sub Inspector is that the Assistant Sub Inspector (Ministerial/Non Combatised Lower Division Clerks) with not less than five years regular service in the grade is eligible for consideration provided he has passed the type test and has completed five years of regular service thereafter. He on this basis contends that the Rules on which the reliance has been placed , under which the petitioner is claiming promotion itself clarifies the regular service and, therefore, the petitioner does not fulfil the requirement and his request for taking the promotional test has been rightly rejected.

5. I have heard counsel for the parties and have gone through the records of the case.

6. The appointment of the petitioner was made on purely temporary basis and that too subject to certain conditions specified therein, vide appointment letter dated 23.09.1989 (Annexure-R-2). Clause 3(a)(i) and (ii) would be relevant for the decision of the present case, which read as follows:

3. a) The terms of appointment are as follows:

i) The appointment is purely temporary and may be terminated at any time by one month's notice given by either side, viz. the appointee or the appointing authority. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith before the expiration of the stipulated period of notice by making payment to him of a sum equivalent to the pay and

allowances for the period of notice or the unexpired portion thereof.

ii) The appointment will be provisional subject to your passing typewriting test at the speed of 30 WPM in English or 23 WPM in Hindi within one year from the date of your appointment failing which your services will be terminated without any notice.

7. A perusal of these conditions would show firstly, that the appointment was purely on temporary basis and secondly, it was provisional subject to the passing of the typing test. It is an admitted position that the petitioner passed the type test on 26.10.1994. Since the date of his passing the typing test, the petitioner has been treated as a regular employee. If that date is taken to be the appointment date on regular basis, the petitioner would be eligible for taking the promotional/departmental test on completion of five years regular service in the grade. This would be apparent from Rule 3 of the CRPF Rules, 1989, which reads as follows:

ELIGIBILITY CONDITIONS FOR SELECTION THROUGH DEPARTMENTAL EXAMINATION:

From amongst Asstt. Sub Insp. (Ministerial/Non Combatised Lower Division Clerks) with not less than five years regular service in the grade.

3. In this connection it is stated that the regular service for the purpose of Promotion/Departmental examination for promotion to the rank of SI (Clk) to be reckoned from the date of regular appointment in grade only, in terms of MHA OM No. 15/3/63-Estt.(D), dated 13 July, 1964 and 16th Sept., 1965 and under the provisions of FR-26(13)(7), Regularization/confirmation in Lower Division Clerks grade in respect of provisional appointees is to be reckoned from a date not earlier than the date of exemption or the date of the test at which they passed the Typing Test, as the case may be.

8. A perusal of the above Rule leaves no manner of doubt that regular service for all intents and purposes for being eligible to participate in the promotional/departmental examination was five years from the date of the test on which the employee passed the typing test. The petitioner has been treated to be in regular service from the date of his passing the type test, i.e., 26.10.1994. Therefore, it can by no stretch of imagination be said that the petitioner was eligible for taking the promotional test on the date when he submitted his application, i.e., 21.07.1996. The order of rejection of his application dated 26.07.1995 (Annexure-P-4) is thus in accordance with the statutory Rules.

Finding no merit in the present writ petition, the same stands dismissed.