

(2013) 03 SHI CK 0030

In the High Court Of Himachal Pradesh

Case No : CWP (T) No. 11563 of 2008 (OA (D) No. 419 of 2004)

Ranbir Singh

APPELLANT

Vs

The Himachal Pradesh State Electricity Board and Others

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Citation : (2013) 03 SHI CK 0030

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Advocate : Ranjan Sharma with Mr. Rajesh Verma, for the Appellant; Anjula Khajuria, Advocate, for Respondents No. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The petitioner has prayed mainly the following reliefs:-

(i) That the final seniority list of drivers dated 13.8.2001 vide Annexure A-8, the corrigendum dated 1.1.2002 vide Annexure A-9 and the provisional seniority list dated 10.6.2004 vide Annexure A-13 and any seniority list issued thereafter, showing the applicant as junior to the respondents No. 3 and 4 as driver may kindly be quashed and set-aside.

(ii) That the respondent may be directed to consider and regularise the applicant as driver w.e.f. 17.12.1985 or 28.2.1986 when the junior work charged drivers i.e. the respondents No. 3 and 4 were regularised and then to reflect such date of regularisation in the seniority list of drivers, forthwith.

(iii) That the corrigendum dated 1.1.2002 vide A-9, giving seniority as regular driver w.e.f. 1.10.87 after deducting 3 years of work charged service from 1.10.1984 and the seniority so determined qua the applicant is discriminatory and illegal when as per ground (o) & (q) supra the respondent No. 5 junior work charged driver was appointed in 1985 was regularised without 3 years of service in 1987, may kindly be quashed and set-aside.

(iv) That the respondents may be directed to give the benefit of retrospective regularisation and seniority to the applicant over and above the respondents No. 3 and 4 and alternatively over and above the respondent No. 5 with all consequential benefits.

(v) That the respondents may be directed to consider and promote the applicant to the higher post of Additional Foreman from 26.8.2003 vide Annexure A-11 when the respondents No. 3 and 4 juniors were promoted with all consequential benefits, including seniority and salary.

The facts in brief are that the petitioner was appointed as work charged driver on 19.9.1984 and he joined as such on 1.10.1984. He was charge-sheeted under Rule 14 of the CCS (CCA) Rules, on 8.7.1986, minor penalty of reduction in pay by one stage without effecting or postponing future increment of pay was imposed against the petitioner on 22.10.1988. In between the appointment of petitioner on work charged basis and issuance of charge-sheet, the respondent No. 1 appointed 10 persons on regular basis including respondents No. 3 and 4. It has been alleged that the Board was bound to consider and to regularise the petitioner as regular driver when petitioner was senior and there was nothing adverse against the petitioner during the period 1.10.1984 to 8.7.1986.

2. The petitioner made representations to the Board through proper channel, on 18.8.1988 and 12.8.1990 requesting to regularise the petitioner retrospectively from the date the junior work-charged drivers were regularised. The Board delayed the regularisation of the petitioner retrospectively from the date juniors work charged drivers were regularised. The petitioner was regularised on 20.1.1995. The provisional seniority list of regular drivers was circulated on 22.3.1999 in which the petitioner was wrongly shown at serial No. 543. The respondent No. 3 was shown at serial No. 132, the name of respondent No. 4 was not shown in that seniority list but respondent No. 5 was shown at serial No. 150. The petitioner submitted representation against provisional seniority list on 17.4.1999.

3. The final seniority list of regular drivers as on 1.1.2001 was circulated on 13.8.2001 in which respondent No. 3, who was junior to petitioner as work charged driver was shown at serial No. 119, the petitioner was shown at serial No. 527, respondent No. 4 at serial No. 107 and respondent No. 5 at serial No. 136. The petitioner submitted representation against final seniority list. The Board issued corrigendum and amended seniority list, the petitioner was placed below serial No. 283 and above serial No. 284 on 1.1.2002. The petitioner was aggrieved by corrigendum dated 1.1.2002. He submitted representation on 20.4.2002 requesting his regularisation retrospectively from the date his juniors respondents No. 3 and 4 were regularised.

4. It has been alleged that the Board illegally promoted the junior work charged drivers respondents No. 3 and 4 to the higher post of Additional Foreman-cum-driver on 26.8.2003 without giving the benefit of retrospective regularisation and

seniority to the petitioner over his juniors.

5. The Board issued on 10.6.2004 provisional seniority list as on 1.1.2001 showing respondents No. 3 and 4 at serial No. 114 and 118 and petitioner at serial No. 276 whereas the petitioner was entitled to his place at serial No. 113A or in alternative at serial No. 133A above respondent No. 5. The petitioner against provisional seniority list dated 10.6.2004 submitted a representation. On the basis of provisional list the Board has started process of starting making promotions to the higher post of Additional Foreman but without rectifying the mistake in the seniority list which is wrong and illegal. It has been stated that the claim of the petitioner for seniority over and above the private respondents and his promotion to the higher post has been wrongly, illegally ignored by the Board and, therefore, the petitioner has filed the petition for the above reliefs.

6. The respondents No. 1 and 2 have contested the petition and filed joint reply. It has been stated that the petitioner was appointed as work charged driver by S.E. (M&T) Circle, Bilaspur on 19.9.1984. The condition No. 5 of the appointment memo provides regularisation on satisfactory work and conduct. The Recruitment and Promotion Regulations for the post of regular drivers were framed and notified on 5.9.1975.

7. The respondents No. 3 to 5 were appointed by different field authorities as work charged drivers. The services of respondents No. 3 and 5 were regularised by their respective Executive Engineers against available vacant posts within their wings during the year 1985 and 1986. The petitioner during this period was working with Operation Wing of respondent No. 1 and due to non-availability of regular vacant post within said Wing, he could not be considered for regularisation. In the disciplinary proceeding the pay of the petitioner was reduced by one stage w.e.f. 1.1.1988. After concluding the disciplinary proceedings and on availability of regular vacant post of driver, the petitioner was brought on regular cadre w.e.f. 21.1.1995.

8. The Recruitment and Promotion Regulations dated 7.8.1991 were further revised by the Board vide notification dated 21.9.1999, the cadre control of the category of driver was ordered to be maintained at State level. On regularisation of the services of the petitioner, his name was included in the integrated seniority list of drivers which was circulated on 13.8.2001. The seniority of petitioner was assigned at serial No. 527. The position was reviewed subsequently and petitioner was given seniority at serial No. 276 after deducting three years service in work charged capacity by giving him the benefit of work charged service in terms of decision of the Board conveyed vide letter dated 12.3.1974.

9. The decision of the Board dated 12.3.1974 is not applicable to the cases of respondents No. 3, 4 as they were regularised against regular vacant posts before completing three years service in work charge capacity. The respondents No. 1 and 2 defended their decision.

10. Heard. The learned counsel for the petitioner has submitted that the

petitioner was appointed as driver and he joined on 1.10.1984 on the post on work charged basis. The respondent No. 3 was appointed as work charged driver on 1.1.1985 and was regularised on 17.2.1985. The respondent No. 4 was appointed work charged driver on 20.9.1985 and was regularised on 28.2.1986. The respondent No. 5 was appointed on 19.11.1985 as work charged driver and was regularised on 19.2.1987. The petitioner was regularised as driver on 21.1.1995. The respondents No. 3 to 5 were junior to petitioner but they were regularised much prior to the petitioner. The petitioner is entitled to regularisation before his juniors, the disciplinary proceeding was started against the petitioner after the regularisation of respondents who were junior to the petitioner. In these circumstances, the Board is not entitled to take shelter to deprive regularisation to the petitioner before private respondents under the garb of disciplinary proceeding. The petitioner is entitled to proper place in the seniority above the private respondents and also promotion as Foreman/ Additional Foreman prior to the promotion of private respondents as Foreman/ Additional Foreman on the basis of impugned seniority.

11. The learned counsel for respondents No. 1 and 2 has defended the stand of respondents No. 1 and 2. She has submitted that the petitioner was appointed as work charged driver in Operation Wing of the Board whereas the private respondents were appointed work charged drivers in other Wings of the Board. The private respondents were made regular on availability of regular vacancies in the Wings in which they were appointed work charged drivers. There was no vacancy of regular driver in the Operation Wing where the petitioner was appointed as work charged driver till the private respondents were regularised. In the meantime, the disciplinary proceeding was conducted against the petitioner and penalty was imposed. He was regularised on availability of regular vacancy of driver in his Wing on 21.1.1995. The drivers in the Board were brought on State cadre vide notification dated 21.9.1999. The petitioner was assigned serial No. 527 in the seniority list dated 13.8.2001 as on 1.1.2001 from the date of regularisation. This was reviewed and he was placed at serial No. 276 in the provisional seniority list dated 10.6.2004 as on 1.1.2001 after deducting three years service in work charge capacity by giving him the benefit of work charge service in terms of decision of the Board dated 12.3.1974. The decision dated 12.3.1974 of the Board is not applicable to respondents No. 3 to 5 who were regularised against on regular posts before completing three years of service on work charge basis.

12. The appointment letter dated 19.9.1984 of the petitioner reveals that he was offered a temporary post of driver (work charged) which also stipulates that the regularisation depends on work and conduct being satisfactory. The appointment letter dated 19.9.1984 does not provide any length of service for regularisation. The relevant part of placement of respondents 4, 3, 5 and petitioner in the seniority list dated 13.8.2001 as it stood on 1.1.2001 is as follows:-

13. The petitioner has not relied any rule, regulation nor he has placed anything

on record to show whether any period is fixed for regularisation of work charged driver. The learned counsel for the petitioner has not denied that petitioner was appointed in Operation Wing and private respondents were appointed in other Wings. The drivers were brought on State cadre vide notification dated 21.9.1999. The stand of the respondents No. 1 and 2 is that in other Wings vacancies of regular drivers had arisen much prior to the vacancy of regular driver in Operation Wing and, therefore, the private respondents were regularised before the regularisation of the petitioner. The petitioner has not placed any material on record when vacancies of regular drivers had arisen in Operation Wing and other Wings in which private respondents were appointed. Therefore, no fault can be found with the regularisation of private respondents as drivers on availability of vacancies in the Wings in which they were appointed as work charged drivers. In addition in the appointment letter dated 19.9.1984 of petitioner there is a stipulation that regularisation depends on satisfactory work and conduct.

14. The letter dated 12.3.1974 is the clarification regarding counting of work charged service for purposes of seniority and promotion. This clarification is applicable to work charged employees. The petitioner initially was assigned serial No. 527 in the seniority list dated 13.8.2001 as on 1.1.2001. The seniority list dated 13.8.2001 insofar petitioner was concerned was amended vide corrigendum dated 1.1.2002 and he was placed below serial No. 283 and above serial No. 284. In the revised provisional seniority list dated 10.6.2004 the petitioner was placed at serial No. 276. The private respondents were regularised before petitioner on availability of regular posts of drivers in their respective Wing where they were appointed as work charged drivers before the posts of drivers were brought on State cadre. The petitioner was regularised on 21.1.1995 in his Wing on availability of regular post and after conclusion of the disciplinary proceeding. He was given the benefit of clarification dated 12.3.1974. The learned counsel for the petitioner has submitted that the petitioner was appointed on the "post" and was given nomenclature of work charged. The private respondents were also appointed likewise. On creation of State cadre of drivers, the petitioner is entitled to seniority above private respondents at the time of integration of different Wings. This contention has no force. The petitioner was appointed as work charged driver which is clear from his appointment letter dated 19.9.1984. The expression "temporary post" in appointment letter dated 19.9.1984 of the petitioner has been used loosely. The petitioner knew that he was appointed as work charged driver and, therefore, he never claimed in his representations that he was appointed as "temporary driver" and not work charged driver. In the petition also there is no foundation that the petitioner was appointed on "temporary post" and not on work charged establishment. Once the petitioner was found junior to private respondents, therefore, no fault can be found for not considering the petitioner for promotion prior to private respondents. Thus seen from any angle, there is no merit in the petition which is accordingly dismissed