
(2012) 03 P&H CK 0465
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12215 of 2008 (O and M)

Tej Pal

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Citation : (2012) 03 P&H CK 0465

Hon'ble Judges : Ranjan Gogoi, C.J;Mahesh Grover, J

Bench : Division Bench

Advocate : Naveen Daryal in CWP Nos. 12215 and 12377 of 2008, Mr. Ashish Aggarwal in LPA No. 1248 of 2009, for the Appellant; R.K.S. Brar, Addl. AG, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, C.J.

The two writ petitions and the LPA were heard together and as the cases are inter-connected the same are being disposed of by the present common order.

Writ Petition No. 12215 of 2008

1. The petitioner in CWP No. 12215 of 2008 Sh. Tej Pal Singh was appointed as an Electrical Helper by the Executive Engineer, PWD (Public Health) Division, Karnal w.e.f 5.7.1984 by order dated 19.6.1984. The said appointment was made in the work charge cadre. Thereafter, taking into account the qualifications required for direct recruitment to the post of Water Pump Operator - II (WPO-II), the petitioner was promoted to the said post on 15.3.1987 in the work charge cadre. Several other work charge employees, who joined service earlier to the petitioner, claimed promotion as granted to the petitioner, besides, seniority and pay etc. at par with the petitioner in the higher post to which he had been promoted. The Department, upon consideration of the cases of the other work charge employees, came to the tentative conclusion that the promotion of the petitioner was not justified inasmuch as the claims of the seniors were ignored.

Therefore, a show cause notice dated 12.5.2008 was issued to the petitioner by the Superintending Engineer to show cause as to why he should not be fixed in the regular cadre of WPO II by suitably scaling down the date of his promotion. The petitioner was also required to show cause as to how consequent orders as regard to reversion or re-fixation of pay should not be made. The petitioner show caused and on consideration of the explanations offered, by order dated 27.6.2008, the promotion order issued to the petitioner on 15.3.1987 stood withdrawn and it was directed that the petitioner will be treated as reverted to the post of Electrical Helper. Accordingly, the pay of the petitioner was also directed to be refixed in the corresponding scale. Challenging the said order, writ petition No. 12215 of 2008 was filed.

CWP No. 12377 of 2008

The petitioner was appointed as a Fitter on work charge basis on 9.2.1982 w.e.f. 1.2.1982. Thereafter, he was promoted to the post of WPO-II on 21.5.1983 in the work charge cadre. The said promotion of the petitioner was similarly objected to by other work charge employees who joined service before the petitioner. Accordingly, a similar show cause notice was issued to the petitioner on 12.5.2008 and on consideration of the reply of the petitioner, by the impugned order dated 27.6.2008, a similar order was passed as in the case of the other petitioner in CWP No. 12215 of 2008.

2. Learned counsel for the petitioners has challenged the impugned order dated 27.6.2008 by contending that the petitioners had the qualifications for being directly recruited to the post of WPO-II and in fact though stated to be a promotion, the same was an appointment by way of direct recruitment through the Employment Exchange. In these circumstances, learned counsel for the petitioners has contended that the entire basis of the claims of the other work charge employees to have similar benefit was unfounded and the said fact could not have been a relevant ground for withdrawal of the promotion order of the petitioners and for their reversion and the refixation of their pay scales.

3. Sh.Brar, learned Additional Advocate General, Haryana has refuted the claims made by the petitioners in both the writ petitions and has pointed out to the pleadings contained in the writ petitions to show that after the initial appointment of the petitioners as Electrical Helper and Fitter, they were promoted to the next higher post of WPO-II by taking into account the qualifications that have been prescribed by the Rules for direct recruitment to the post of WPO-II. Nevertheless the appointment of the two petitioners in the post of WPO-II is by way of promotion which could not have been done to the exclusion of other work charge employees who had joined the Department earlier than the petitioners. Pointing out the relevant Rules that are applicable in this regard i.e Haryana Public Works Department, Public Health Branch, Circular Cadre Mechanical (Group C) Service Rules, 1988 (hereinafter referred to as "the Rules"). Sh.Brar has stated that the post of WPO-II is to be filled up by promotion to the extent of 50% and by way of direct recruitment to the extent of

50%. Apart from Electrical Helpers and Fitters who are eligible for promotion, incumbents holding post of Mali-cum-Chowkidar (MCC) are also eligible for such promotions. It is, therefore, contended that the cases of the petitioners could not have been considered for promotion by ignoring the seniors holding the post of MCC from dates earlier to that of the petitioners. The promotion order of the petitioners was a mistake and on the strength of the law laid down by the Apex Court in Union of India Vs. Narinder Singh (2008) 2 SCC 780 such errors can be corrected by the employer which has been so done by the impugned order dated 27.6.2008.

4. We have considered the submissions advanced by the learned counsels for the respective parties. We have read the pleadings contained in the writ petitions and the reply of the respondents as well and we have also considered the provisions of the service Rules applicable in the present context.

5. From the averments made in the writ petition it is clear that appointments of the two petitioners in the post of WPO II was by way of promotions. Under the Rules in force, 50% of the posts of WPO-II are to be filled up by promotion and alongwith Electrical Helpers and Fitters, Mali-cum-Chowkidars, (MCC) are also entitled to be considered for promotion provided they have the required period of service. At the time of promotion of the two petitioners, several incumbents in the work charge cadre holding the post of MCC who are senior to the petitioners had been ignored and the cases of the petitioners were considered to the exclusion of such eligible and senior persons. Such persons, therefore, filed representations claiming parity with the petitioners. At this stage the Department realized the mistake that had been committed in conferring promotion to the petitioners and the promotion orders were subsequently withdrawn by the impugned orders after giving the petitioners an opportunity to have a say in the matter. If the promotion orders of the petitioners were unauthorized and eligible persons senior to the petitioners were available for consideration but were ignored there could be no escape from the conclusion that the promotion orders of the petitioners were not justified. If that be so, surely the errors committed while making such promotions could have been corrected by the employer which has been done by order dated 27.6.2008. We, therefore, have no hesitation in coming to the conclusion that order dated 27.6.2008 impugned in both the cases do not suffer from any legal infirmity which will call for interference of this Court. Consequently, we dismiss the writ petitions. However in the facts and circumstances of the case, we make no order as to costs.

LPA No. 1248 of 2009

6. The relevant facts may be noticed at the outset.

7. The petitioners appointed as Mali-cum-Chowkidars (MCC) in the Public Works Department, Karnal, claim that they are senior to one Dev Raj who had been promoted to a higher post. The petitioners, therefore, claim promotion on the aforesaid basis. The promotion of Dev Raj was on the strength of a decree

passed by the Court which decree itself was passed on the basis that some persons junior to Dev Raj, namely, one Tej Pal and one Chander Prakash were promoted. The learned Single Judge hearing the writ petition took the view that as the promotion orders of Tej Pal and Chander Prakash were withdrawn, the claim of Dev Raj had no legs to stand so as to sustain the claims of the petitioners. However, Dev Raj had already been promoted on the basis of a Court decree which had attained finality. The learned Single Judge therefore held that notwithstanding the promotion of Dev Raj, promotion cannot be granted to the petitioners. Accordingly, the writ petition was dismissed giving rise to the present appeal. The withdrawal of the promotion orders of Tej Pal and Chander Prakash were challenged before this Court in CWP Nos. 12215 of 2008 and 12377 of 2008. The said writ petitions have been dismissed by orders passed today. In view of the orders of dismissal of the writ petitions, the conclusion that has to be reached is that the promotion orders of Tej Pal and Chander Prakash were Nonest in law and such promotions could not have given rise to a claim either in Dev Raj or the present appellants to seek promotion. In fact, with the dismissal of the writ petitions of Tej Pal and Chander Prakash (CWP Nos. 12215 and 12377 of 2008), the conclusion that has to be reached in this appeal is clear. The claim for promotion on the basis that juniors have been promoted would have no legs to stand. The appeal, consequently, is found to be without any merit and is accordingly, dismissed. However, in the facts and circumstances of the case, we make no order as to costs.