

Punjab-Haryana High Court

Er.B.R.Bawa And Others vs State Of Punjab & Others on 14 July, 2009

CWP NO.15794 OF 1990

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

DATE OF DECISION:14 .7.2009

Er.B.R.Bawa and others

...Petitioners

VERSUS

State of Punjab & Others

...Respondents

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.R.D.Bawa,

Advocate for the petitioners

Mr.BS Chahal,

DAG, Punjab

Mr.R.K.Sharma, Advocate

Permod Kohli, J.

Order dated 3.12.1990 whereby the final seniority list of Assistant Engineers as it stood on 30.10.1990 has been challenged in the present writ petition. The petitioners belong to Civil Wing of the Engineering Service and the relief claimed in the present petition is confined to Civil Wing of the Punjab Housing Development Board. It is admitted case of the parties that respondent-Corporation has not framed any separate rules governing the service conditions of its employees belonging to the Engineering Wing and the Service rules, namely, Punjab Service of Engineers Class-II, P.W.D. (Building and Roads Branch) Rules, 1965 were adopted by the Board and the service conditions of the petitioners are governed and regulated by the aforesaid rules.

The petitioners were appointed as Assistant Engineers vide order dated 17.9.1981. Rule 6 of the 1965 Rules provides for different modes of recruitment of Engineers indicated therein. In a block of 40

vacancies, 26 vacancies are earmarked for direct recruits, 8 by promotion from amongst the members of the Punjab PWD (B&R) Sectional Officers (Engg.) Service, 3 by promotion from draftsmen members and Tracers services, 4 by promotion from members of the Punjab PWD (B&R) Sectional Officers (Engineers). The rule further provides for shifting of the vacancies from some of the specified sources in the event of non-availability of suitable candidates. The seniority of the members of the service is regulated by Rule

12. This rule, inter-alia provides for determination of the seniority of the members of the service by the order of appointment in service according to Rules 6, 8 and 9 irrespective of their date of joining. Under the 1st Proviso to Rule 12 (1), it is provided that in case of those officers whose probation is extended, the date of appointment shall be deemed to have been issued on date determined by adding to the original date extended period of probation. From the perusal of the aforesaid two Rules, it appears that the seniority of the members of service is to be governed on the basis of the quota fixed for each source and the specific roster point fixed for such source.

It has been pleaded in the writ petitions that in the Punjab Housing Board, there are three Engineering Wings- Assistant Engineers (Civil), Assistant Engineers (Public Health) and Assistant Engineers (Electrical). Each wing has separate cadres and separate seniority. The present dispute relates to only the seniority in the Civil Wing. The three separate seniority lists have been circulated by respondent no.2 for the cadre of Civil Engineers (Civil) Wing and other two wings referred to above. These tentative seniority lists were circulated on 31.7.1981 vide letter dated 26.7.1983.

Vide the aforesaid Circular, objections were invited in respect of the tentative seniority list. On consideration of the objections, a final seniority list dated 3.4.1984 (Annexure P-3) was circulated. This seniority list clearly establishes that the seniority has been fixed by applying quota/rota rule in accordance with Rules 6 and 12 of the Punjab Service of Engineers Class-II PWD B&R Branch Rules, 1965 (hereinafter referred to as "the 1965 Rules"). As a matter of fact, the seniority has been fixed on the basis of roster points irrespective of the date of joining. Another tentative seniority list came to be issued in the year 1989 and the names of those persons who were appointed after the issuance of the first seniority list were also included but in the same manner. It is alleged that some persons with vested interests attempted to put pressure to fix the seniority according to the date of joining. Apprehending that the seniority list may be changed, the petitioners made a representation dated 21.2.1989 (Annexure P-4) requesting for maintaining the seniority, as per final seniority list dated 3.4.1984 (Annexure P-3). The authorities, however, on consideration of various representations for and against the rota/quota system, published an upto date tentative seniority list as it stood on 3.4.89 vide letter dated 19.5.89 (Annexure P-5).

It is alleged that a new Housing Commissioner took over and attempts were made to disturb the above seniority. The petitioners again made a representation dated 8.8.1990 (Annexure P-6). Since the petitioners were apprehending change of the mode of fixation of seniority, they filed CWP No.12945 of 1990 (Er.K.K.Jain and others vs. State of Punjab and another) before this Court. The aforesaid writ petition was disposed of vide order dated 5.10.1990 with the following directions:-

"After hearing the learned counsel for the petitioners we direct the respondents to decide the representation dated 8.8.1990 Annexure P-6 to the writ petition, by passing a speaking order in accordance with law within two months. The petition stands disposed of accordingly."

Respondent no.2 considered the representation of the petitioner in the light of the aforesaid directions and rejected the same vide order dated 4.12.1990 (Annexure P-8) and fixed the seniority on the basis of date of joining, ignoring the quota/rota. Seniority lists (Annexures P-3 and P-5) earlier issued in accordance with the quota-rota have been altered. It is further alleged by the petitioners that even though the seniority vide order (Annexure P-8) has been fixed on the basis of date of joining, however, the rule of length of service has also not been adhered to. It is stated that appointees of the year 1979 in the cadre of Assistant Engineers (Civil) have been shown senior to appointees of the years, 1976, 1977 and 1978. Similarly, appointees of 1981 have been shown senior to the appointees of 1978, 1979 and 1980. It is specifically alleged that one Engineer K.B.Passi who is an appointee of 22.11.1976 has been brought down because of extension of his probation period under proviso to Rule 12 of the 1965 Rules whereas Maninder Singh whose probation period was also extended and whose roster point was allotted to petitioner no.1, as is clear from Sr.No.18 and 25 of Annexure P-5, has been placed at Sr.No.18 and petitioner no.1 has been pushed down at Sr.No.40.

In sum and substance, the contention of the petitioners is that seniority is to be fixed on the basis of quota/rota as envisaged under Rules 6 and 12 of the 1965 Rules. From the perusal of the impugned order (Annexure P-8), it appears that the authorities have adopted length of service as the mode of fixation of seniority on the plea that the rota/quota system has broken down.

The respondents have defended and justified the impugned order (Annexure P-8) firstly on the ground that the persons who are senior to the petitioners and are likely to be affected, are not parties before this Court. Secondly, the seniority has been fixed after affording an opportunity of being to the petitioners and on the basis of the judgment of Hon'ble Supreme Court in the case of The Direct Recruit Class-II Engineering Officers' Association and others v. State of Maharashtra and others, AIR 1990 Supreme Court 1607. It is been further argued that since quota/rota system has already broken down and no person under the roster point was eligible for promotion to the posts, hence, the appointments were made by direct recruitment on regular basis between 1978 to 1980 and thus quota/rota system is not applicable. The respondents have placed reliance upon the judgment of the Hon'ble Supreme Court in the case of The Direct Recruit Class-II Engineering Officers' Association (supra). In the aforesaid judgment, Hon'ble Supreme Court made following observations:-

"44.....(E)Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. (F)Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule..."

In the case of M.Subba Reddy and another vs. State Road Transport Corporation and others, 2004 (2) SCT 752, it has been held that rule of rota is inbuilt in the quota prescribed for direct recruits and for promotees and so long as the quota rule is in force between two sources, the Government cannot deviate from the same and the seniority of the promotees even if promoted prior in time against the vacancies meant for direct recruits could have to be brought down below the direct recruits and will be fixed on roster point of their quota when it became available. Similar view has been expressed in the case of Arvinder Singh Bains v. State of Punjab and others, AIR 2006 Supreme Court 2265 wherein following observations have been made:-

"58.We have also referred to the decisions rendered by this Court. This Court said rota and quota must necessarily be reflected in the seniority list and any seniority list prepared in violation of rota and quota is bound to be negated. The action of the respondents in determining the seniority is clearly in total disregard of rota-quota prescribed in Rule 18 of the 1976 Rules. The action is therefore, clearly contrary to the law laid down by this Court. Thus we hold:

1.that the action of the State is contrary to the 1976 rules;

2.the seniority under the 1976 Rules must be based on a collective interpretation of Rule 18 and Rule 21 of the 1976 Rules;

3.the action of the authorities is negation of Rule 18 of 1976 Rules in determining the seniority by the impugned order. Since the action is contrary to law laid down by this Court, we have no hesitation in allowing the appeal and grant the relief as prayed for by the appellant."

In the present case, Rule 6 of the 1965 Rules prescribes for the quota in the following manner:-

"6.Recruitment to service (1): Recruitment to the service for cadre and ex- cadre post shall be made in the following manner only from the sources listed below in the promotions and the order indicated against a lot of every 40 vacancies.

Method of recruitment	Proportion	Allocation to each source in a lot of 40 vacancies
1.Direct Appointment	26	5 6 5 5 5

Method of recruitment	Proportion	Allocation to each source in a lot 40 vacancies
2.Promotion from the members of 8 the Punjab PWD (B&R) Sectional Officers (Engg.) Services		2 1 2 1 2
3.Promotion from draftsman 2 members of the Draftsman and tracers services		1 - - 1 -
4.Promotion from members of the 4		- 1 1 1 1

Pb. PWD (B&R) Sectional Officers

(Engg.)

5.Service and the Draftsman and

tracer service possession
qualifications prescribed in

Appendix "B"

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(2)In case suitable candidates are not available from source no.4, the vacancies shall be filled by direct recruitment.

(3)In case a candidate is not available from sources 1 and 3 and person has to be appointed, in public interest as a stop-gap arrangement from other than the allotted sources such a person shall be liable to be reverted to his original cadre when a candidate from the allotted source is available and the period of service rendered by such person will not be reckoned for the purpose of seniority.

(4)The Government may fill a short term vacancy in the exigencies of public service, after recording specific reasons, for a period not exceeding six months in each case by local arrangement from among the members of the Punjab PWD B&R, Sectional Officers (Engg.) Service without resorting to the select list prepared.

(5)No person except to the extent provided under sub rule (9).

a)who is not substantive member of the PWD (Buildings & Roads Branch) Class II Service or a member of PSE (B&R) Class I Service in the junior scale on the date of enforcement of these rules.

b)who is not considered suitable for appointment to the service as provided in rule read with Appendix "G" shall hold the post of a Sub Divisional Officer even in an officiating capacity unless he is declared within a period of six months from the date of enforcement of these rules, as suitable for appointment to the service under the provisions of these rules."

From the reading of the aforesaid Rule, it is apparent that the recruitment to the cadre in the service is to be made from different sources and in the ratio prescribed there for against the slots earmarked for each source on rotation basis. Sub Rule (2) of Rule 6 permits the deviation of the vacancies from Source No.4 to direct recruits. However, in all other sources, the deviation could be temporary as stop-gap arrangement and when the eligible persons from the particular source are available, the stop-gap promotees are to make way. The intention of the rule making authority is very clear i.e. to adhere to the quota/rota prescribed therein. Seniority for the members of the service is to be regulated under Rule 12 of the 1965 Rules which reads as under:-

"12.SENIORITY (1)Except as provided in sub rule (5) of this rule relating to officers appointed by transfer, the seniority of the members of service shall be determined by the order of appointment in service according to rules 6, 8 and 9 irrespective of their

date of joining.

Provided that:

Where the period of probation of an officer has been extended the order of appointment shall be deemed to have issued on date determined by adding to the original date extended period of probation.

2.The inter-se seniority of the members of the service shall be in order to recruitment provided under rule;

Provided that:

in case an officer does not join this appointment within six months of the date of order of appointment his seniority shall be determined by Govt. on an ad hoc basis after taking into consideration all the circumstances of the case.

3.The inter-se seniority within the group of direct recruitment shall be as in the merit under Rule 8.

4.The inter-se seniority within the group of promoted officers (from particular source) shall be as in the list approved under rule 9.

5.In the case of an officer appointed by transfer as an Assistant Engineer, while normally he would be placed junior to all the officers appointed directly or by promotion as Assistant Engineers. In a particular year the Govt. may in the interest of the public service and taking into consideration all the circumstances of the case, fix the seniority on an ad hoc basis.

Provided that the seniority thus fixed shall, in no case, be more favourable than the seniority determined after his credit for the period of service rendered by him in previous appointment as Assistant Engineer or on a post equivalent or greater responsibility. The decision of Government on this point shall be final.

Provided further that the provisions of proviso to sub rule (1) shall apply to such an officer if his period of probation is extended."

Sub Rule (1) of Rule 12 clearly prescribes that the seniority shall be determined by order of appointment in the service according to Rules 6, 8 and 9 irrespective of the date of joining. Sub Rule (2) further lays down the concept of rota and quota by providing that the inter se seniority of the members of service shall be in the order to recruitment provided under the rule. The rules provide for recruitment from different sources and in the ratio prescribed therein as is evident from Rule 6 and thus, the mode of recruitment and the quota prescribed there for is to be applied for determining the seniority in the cadre of service. In the case of M.Subba Reddy (supra), it has also

been laid down that where there is inaction on the part of the Government or the employer or imposed ban on direct recruitment, in filling up the posts meant for direct recruits, it cannot be held that the quota has broken down. The plea of the respondents that the seniority is to be fixed on the basis of the date of joining and length of service because the quota-rota system has broken down, is contrary to the mandate of Rules 6 and 12 of the 1965 Rules. It is settled law that once the Rule prescribes the quota, the same is to be adhered to as is the ratio of judgments referred to here-in-above. Reliance placed upon the judgment of the Hon'ble Apex Court in the case of The Direct Recruit Class-II Engineering Officers' Association (supra) is mis-placed. Deviation is permissible if rule permits. Sub rule (2) of Rule 6 allows deviation only from source 4 to source 1 (direct recruitment). No further deviation is permitted. To the contrary sub rules 3 & 4 prohibit deviation of quota. It is also significant to note that slots are fixed for each source. Rule is to be construed strictly.

In view of the above, this petition succeeds. The impugned order alongwith the seniority list dated 4.12.1990 are hereby quashed. It is directed that the seniority of members of service at the level of Sub Divisional Engineers of Civil Wing shall be determined on the basis of quota by rotating the vacancies in the manner as determined vide seniority lists (Annexures P-3 and P-5) as prescribed under Rule 6 of the 1965 Rules. Let the final seniority list be re-determined afresh and published within a period of four months, in the light of the observations/directions contained here-in-above.

(PERMOD KOHLI) JUDGE 14.7.2009 MFK NOTE:Whether to be referred to Reporter or not? YES