

(2011) 08 P&H CK 0266

High Court Of Punjab And Haryana At Chandigarh**Case No:** CWP No. 16900 of 2009 (O and M)

Pardeep Kumar

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision: Aug. 18, 2011**Hon'ble Judges:** K. Kannan, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

K. Kannan, J.

The petitioner seeks for issuance of a mandamus to transfer the petitioner from IRB Commando Battalion as he has requisite qualification and passed the test for favourable consideration. Among other grounds, the petitioner's grievance is that the person junior to him Charanjit Singh had been transferred to the Commando Formation while he has been denied such a transfer.

2. The counsel appearing for the State points out that it was a policy decision not to transfer persons like the petitioner, who were also qualified in certain trades such as Driver, Carpenter, Mali etc. Since the petitioner was a Driver, in terms of the policy, he could not be transferred.

3. I am of the view that the contention cannot be accepted for the only reason that junior Charanjit Singh, who like the petitioner had passed the requisite test for Commando Battalion, had been transferred although, he was also a Driver. It appears that the petitioner and Charanjit Singh had been originally ordered to be transferred to the Commando Formation but later it was cancelled. The cancellation issued for Neki Ram and Charanjit Singh on 29.07.2004 was challenged in a writ petition in CWP No.7053 of 2006. The Division Bench of this Court while upholding the challenge rejected the plea taken on behalf of the respondents that there had been a change in policy and that persons who had been serving in certain trades could not be transferred. The Bench held that such a policy cannot act retrospectively and if they were ordered to be transferred from IRB even in the year

2000, the policy that came subsequently in the year 2002, could not be applied to deny to them the right of being considered for transfer. In this case, even apart from the reasoning adopted by the Division Bench in CWP No.7053 of 2006, the transferred employee Charanjit Singh was also a Driver would only mean that the respondents cannot practice any discrimination against the petitioner and more so when Charanjit Singh was junior to him. The petitioner is entitled to a consideration for such a transfer and the respondents shall pass an appropriate order within four weeks from the date of receipt of certified copy of the order. The petitioner will also be entitled to the grant of all consequential benefits with effect from the date when the juniors to him had been transferred to the Commando Battalion.

4. The writ petition is allowed.