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Pardeep Kumar Vs The State of Punjab and Others

CWP No. 16900 of 2009 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

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.