

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 09.08.2012

+ **W.P.(C) 8026/2011**

J.P. GUPTA AND ORS

... Petitioners

versus

HIGH COURT OF DELHI AND ORS

... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mrs Jyoti Singh, Sr Advocate with Mr Padma Kumar, Mr. K.K. Mishra, Mr Tinu Bajwa and Ms Sahilla Lamba.
For the Respondent	: Mr Viraj R. Datar with Mr Mayank Mikhail Mukherjee for R-1. Ms Avnish Ahlawat with Ms Latika Chaudhary for R-2. Mr Paramjit S. Bindra with Mr Ketan Madan for R-4. Mr D.K. Thakur for R-5.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition has been filed on behalf of the Readers Grade-I/Senior Assistants, Readers Grade-II/Assistants, Readers Grade-III/U.D.Cs. and Ahlmads/Assistant Ahlmads/L.D.Cs. of the District Courts of Delhi. They have challenged the minutes of the meeting dated 19.04.2011 and 28.07.2011 of the Selection Committee of the Delhi High

Court and the Full Court, respectively, with regard to the ratio for promotion to the post of Superintendent in the Subordinate Court.

2. The Selection Committee meeting was held on 19.04.2011 and the relevant portion of the minutes of that meeting are as under:-

“To consider the comments of District Judge-I and Sessions Judge, Delhi, received vide letter No.328/Admn.I/S&P/2011 dated 08.02.2011 regarding appointment to the post of Superintendent in the ratio of 3:1 in response to the representation dated 06.10.2010 of Ms Sunita Sharma, Private Secretary.

We have perused the office note and the comments of the District Judge-I and Sessions Judge. After careful consideration of the matter we feel that keeping in view the existing cadre strength of the feeder cadres, i.e. 257 of Sr Assistant/Readers line and 241 of the stenographer line, the existing ratio of 3:1 needs to be amended so as to be 1:1 it is accordingly recommended to the Full Court that the ratio for appointment to the post of Superintendent from the above feeder cadres in the District Courts, Delhi be made as 1:1.

The issue as to whether the existing 17 vacancies of Superintendent in the District Courts be filled up as per the existing ratio of 3:1 or the proposed amended ratio of 1:1 in case the proposed ratio is approved by the Full Court, be also placed before the Full Court for decision. We are informed that the minimum qualification for promotion to the post of Superintendent has been prescribed as “Matriculate”. We feel that the same is not in conformity with the stature of and the nature of the duties attached to the post. Accordingly, we recommend that henceforth the minimum qualification for promotion to the post of Superintendent may be prescribed as “Graduate”.

3. This was followed by the Full Court meeting which was held on 28.07.2011. The relevant extract from the minutes of the meeting of the Full Court held on that date are as under:-

“EXTRACT FROM THE MINUTES OF THE MEETING OF
THE FULL COURT HELD ON 28.07.2011 AT 4.45 P.M. IN
THE JUDGES LOUNGE”

Item No.	Agenda	Minutes
6.	To consider the recommendations of the Selection Committee in respect of appointment of Superintendent in the office of the District & Sessions Judge, Delhi.	Considered. The recommendations dated 19.04.2011 of the Selection Committee in respect of appointment of Superintendent in the office of the District & Sessions Judge, Delhi were approved. It was further decided that the existing 17 vacancies of Superintendent in the District Courts be filled up as per the amended ratio of 1:1. Registry to take necessary steps.”

4. The grievance of the petitioner is that earlier there was a ratio of 3:1 between the general line and the line of Stenographers insofar as promotion to the post of Superintendent was concerned. That ratio has been changed by virtue of the recommendations made by the Selection Committee and

the decision arrived at by the Full Court whereby the ratio has now become 1:1.

5. The total strength of officials of the general line and officials of the Stenographers line at present, as given in the writ petition, are as under:-

“Total strength of officials of General Line and official of Stenographer line AT PRESENT

GENERAL LINE

Sl. No.	Name of the post	No. of sanctioned post	Pay scale	Grade pay
1.	Reader Grade-I/ Senior Assistant	257	Rs.9300-34800/-	Rs.4600/-
2.	Reader Grade-II/ Assistant, etc.	204	Rs.9300-34800/-	Rs.4200/-
3.	Reader Grade-III/ UDC, etc.	535	Rs.5200-20200	Rs.2400/-
4.	Ahlmad/Asstt. Ahlmad/LDC, etc.	2290	Rs.5200-20200/-	Rs.2800/-
	Total	3286		

STENOGRAPHER LINE

Sl. No.	Name of the post	No. of sanctioned post	Pay scale	Grade pay
1.	Stenographer Grade-I	258	Rs.9300-34800/-	Rs.4600/-
2.	Stenographer Grade-II	256	Rs.9300-34800/-	Rs.4200/-
3.	Stenographer Grade-III	698	Rs.5200-20200	Rs.2400/-
	Total	1212		

6. The feeder cadre for the post of Superintendent is Reader Grade-I/Senior Assistant from the general line and Stenographer Grade-I from the Stenographer line. The number of sanctioned posts in these feeder cadres is virtually the same. This is apparent from the fact that there are 257 posts of Reader Grade-I/Senior Assistant in the general line and there are 258 posts of Stenographer Grade-I in the Stenographer line. It is based on this equality of strength in the feeder cadres that the Selection Committee made the recommendation that the ratio should be 1:1 and not 3:1 as was hitherto prevailing. This rationale has been accepted by the Full Court in the meeting held on 28.07.2011.

7. The plea on behalf of the petitioners, who belong to the general line, is that since the entire cadre strength in the general line is three times the total strength of the Stenographers' line, the ratio of 3:1 ought to have been maintained and ought not to have been reduced to 1:1. One of the grounds for this submission was that the promotional avenues in the general line are very limited as compared to that in the Stenographers' line and, therefore, it was submitted that it is the entire cadre which ought to be taken into consideration and not just the feeder cadre.

8. The learned counsel for the petitioner also submitted out that the entire material and full facts were not placed before the Selection Committee and it is because of this deficiency that the Selection Committee came to the conclusion that the ratio should be 1:1 between the general line and the Stenographers' line insofar as promotions to the posts of Superintendents are concerned.

9. There is a great deal of controversy with regard to whether, earlier, the ratio of 3:1 was fixed on the basis of the entire cadre strength or it was fixed on the basis of only the feeder cadre strengths. Be that as it may, the position which emerges from the extracts of the minutes of meeting dated 19.04.2011 clearly indicates that the reason why the ratio of 1:1 has been recommended by the Selection Committee was that the strength in the feeder cadre of the general line and the Stenographers' line was virtually identical and, therefore, the ratio of 1:1 was recommended. It is this recommendation which has been accepted by the Full Court.

10. Therefore, what may have been the reason for adopting the ratio of 3:1 at earlier points of time, the logic behind adopting the ratio of 1:1 pursuant to the said recommendation of the Selection Committee is that of equality or near equality in the strengths of the feeder cadres of the general

line and the Stenographers' line for the post of Superintendent.

11. The learned counsel for the petitioner referred to a decision of a Division Bench of the Orissa High Court in the case of **Pramod Kumar Satpathy And 11 Ors v. State of Orissa And 16 Ors : 104 (2007) CLT 696,** but we fail to see as to how this decision would come to the aid of the plea taken by the petitioner. Paragraph 17 and 18 of the said decision of the Orissa High Court would be relevant. They read as under:-

“17. Again in the case of Kuldeep Kumar Gupta and Ors. v. Himachal Pradesh State Electricity Board and Ors. reported in AIR 2001 SC 308, Hon'ble Supreme Court held in paragraph 6 that it is usually for the Government to provide a quota of promotion whenever the feeder category itself consists of different categories of persons. Such quota is fixed in order to equi-balance each category so that they get equal opportunity of promotion. Hon'ble Supreme Court made it very clear that in the larger interest of administration the decision of the employer who is best suited to decide the percentage of posts in the promotional cadre should not be trifled with.

18. Similar observations have been made by the Hon'ble Supreme Court in the case of Dwarka Prasad and Ors. v. Union of India and Ors. Learned Judges have gone to the extent of saying that fixation of quotas in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department is a prerogative of the employer and the same pertains to policy making field. Learned Judges held that in fixation of such quotas, various factors are taken into account namely, cadre strength in the feeder quota, suitability of holders in the feeder post, nature of duties, experience and the channels of promotion and most important of them is the requirement of

the promoting authority for manning the post on promotion with suitable candidates. The Hon'ble Supreme Court held that when quota is therefore fixed taking various factors into account, there can be no rule of absolute equality or arithmetical exactitude. Such quotas may vary from case to case depending upon the pattern, structure and hierarchies in the Departmental set up as well as the exigencies and balancing needs of Administration.

It is obvious in such areas, the Court or Tribunal should be very slow in interfering unless there is palpable discrimination in the matters of fixation of quota."

(underlining added)

12. If we see the above extract, we find that the Division Bench of the Orissa High Court has placed reliance on the decision of the Supreme Court in **Kuldeep Kumar Gupta and Ors v. Himachal Pradesh State Electricity Board and Ors**: AIR 2001 SC 308 wherein the Supreme Court made it clear that in larger interest of administration, it is the employer who is best suited to decide the percentage of posts in the promotional cadre and such a decision should not be trifled with.

13. Even in **Dwarka Prasad and Ors v. Union of India and Ors** : 2002 (6) SCC 535 we find that the observations of the Supreme Court do not come to the aid of the petitioner but on the other hand affirm the stand taken by the Full Court of the Delhi High Court. Paragraph 16 and 17 of the said decision are relevant and they read as under:-

“16. Fixation of quotas or different avenues and ladders for promotion in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department is a prerogative of the employer, mainly pertaining to policy-making field. The relevant considerations in fixing a particular quota for a particular post are various such as the cadre strength in the feeder quota, suitability more or less of the holders in the feeder post, their nature of duties, experience and the channels of promotion available to the holders of posts in the feeder cadres. Most important of them all is the requirement of the promoting authority for manning the post on promotion with suitable candidates. Thus, fixation of quota for various categories of posts in the feeders cadres requires consideration of various relevant factors, a few amongst them have been mentioned for illustration. Mere cadre strength of a particular post in feeder cadre cannot be a sole criteria or basis to claim parity in the chances of promotion by various holders of posts in feeder categories.

17. Normally, where officers are to be drawn for promotion from different posts in the feeder cadre, quota for each post in the feeder cadre is maintained proportionately to the sanctioned strength in that post. This, however, cannot be an inviolable rule of strict application in every case, with an absolute equality of arithmetical exactitude but may vary case to case depending upon the pattern, structure and hierarchies in the Departmental set-up as well as exigencies and balancing needs of Administration. There are other relevant considerations, some of which have been mentioned above, which may require departure from the practice of fixation of quota for each post in the feeder cadre, solely proportionate to its strength.”

14. The Supreme Court itself observed as would be apparent from the above extract that while fixing a particular quota for a particular post the

cadre strength in the feeder cadre is one of the relevant circumstances. The Supreme Court also observed that normally where officers are to be drawn for promotion from the different posts in the feeder cadre, quota for each post in the feeder cadre is maintained proportionately to the sanctioned strength in that post.

15. Thus, reading the said decision of the Supreme Court as also of the Orissa High Court, it is apparent that adoption of a particular ratio on the basis of the relative strengths in the feeder cadres is not a criteria which is unknown. On the other hand, that is one of the relevant considerations which needs to be looked into for the purposes of fixing the ratio or quota.

16. The learned counsel for the petitioner placed strong reliance on paragraphs 19 and 20 of the Division Bench's decision of the Orissa High Court in the case of **Pramod Kumar Satpathy** (*supra*) which reads as under:-

“19. In the instant case, considering the strength of the base services from which promotion to the feeder cadre is made, the ratio of 2:1, in the language of the Supreme Court, equibalances the chances of promotion of the employees coming from two different sources.

20. Learned counsel for the private Opposite Parties in W.P.(C) No.12484 of 2003 also relied on two Judgments of the Hon'ble Supreme Court on which reliance was placed by the Learned

Counsel for the State. Reliance was also placed on Kuldeep Kumar Gupta where the Hon'ble Supreme Court held that fixation of quota should be equi-balanced. There can be no dispute to the said proposition. But here the fixation of quota is to be equi-balanced by taking the entire cadre strength of two services and including the feeder posts. If that is done the ratio of 2:1 is correctly framed in the Rules. In the case of equi-balancing the chances of promotion between the two groups of employees the Court has to see the entire cadre strength. The Tribunal has taken only the upper strata of the feeder post which is immediately below the post of Assistant Commandant, namely, the Subedar, Subedar Major, and Reserve Inspector. The Tribunal has not taken into account the cadre strength of Jamadar from which the Subedars are promoted and the cadre strength of Sergeants from which Reserve Inspectors are promoted. Therefore, the Tribunal has taken, if I may say so, a very perfunctory view of the cadre strength of two services. So the ratio in the case of Kuldeep Kumar Gupta virtually goes against the contention of the Learned Counsel for the private Opposite Parties.”

17. However, we do not see as to how this would, in any manner, enable the petitioner to challenge the quota of 1:1 which has been fixed by the Full Court. This is so because unless and until the petitioners are able to show and demonstrate that the ratio of 1:1 is completely arbitrary and perverse, the decision of the Full Court should not be trifled with. In fact this exactly what has been noted in the decision of the Supreme Court in the case of **Kerala Magistrates (Judicial) Association and Others v. State of Kerala and Others**: AIR 2001 SC 1075 which was also a decision cited by the

learned counsel for the petitioner. In that case, the Supreme Court referred to its earlier decision in the case of **Joginder Nath v. Union of India:** (1975) 3 SCC 459 wherein it was observed that “*The Court also observed that a better formula could be evolved, but the Court cannot substitute its wisdom for Government’s save to see that unreasonable perversity, mala fide manipulation, indefensible arbitrariness and infirmities do not defile the equation for integration.*” It is in that context that the Supreme Court in the case of ***Kerala Magistrates*** (*supra*) observed that it would be necessary to examine whether, in that case, the provision of ratios of 3:1 and 5:2 in the integrated cadre, as provided in sub-rule (4) of Rule 3 of the Kerala Judicial Service Rules, could be held to be arbitrary, irrational or perverse. After considering all the circumstances, the Supreme Court came to the conclusion that the provision of ratios of 3:1 and 5:2 could not be held to be arbitrary, irrational and perverse and it did not find any legal infirmity requiring any interference.

18. In the present case, we find that the sole reason behind adopting the ratio of 1:1 was the near identity of strength of the feeder cadre of the general line and the Stenographers’ line. Such a principle cannot be said to be arbitrary or perverse. Of course, there is no allegation of any *mala fide*

manipulation. Thus, going by the Supreme Court observations in the case of ***Joginder Nath*** (*supra*) as applied in ***Kerala Magistrate*** (*supra*), unless and until the ratio adopted by the Full Court was shown to be arbitrary or perverse or irrational, it ought not to be interfered with. This Court, even if it is held that a ratio of 1:1 was not the best ratio, cannot substitute its view in place of that of the Full Court.

19. The writ petition has no merit and the same is hereby dismissed. There shall be no order as to costs. All interim orders stand vacated.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

AUGUST 09, 2012

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