

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

SWP No. 287/2019  
CM No. 1349/2019

**Surjeet Singh S/O Hem Raj  
R/O Mohalla Waziran (Bohri), District  
Jammu**

.....Applicant(s)/Petitioner(s)

Through :- Mr. Satyajeet, Advocate

v/s

- 1. Union of India, through Secretary,  
Ministry of Defence, New Delhi-110011**
- 2. Chief of Army Staff,  
Army Head Quarters, New Delhi-110011**
- 3. Station Commander, Station Head Quarter,  
Jammu Cantt, Jammu C/O 56 APO**
- 4. Administration Commandant,  
Station Head Quarter, Jammu C/O 56 APO**
- 5. Presiding Officer, Station Head Quarter,  
Jammu C/O 56 APO**
- 6. Bharat Bhushan S/O Rattan Lal  
R/O H.No. 587/A, Nai Basti, Jammu**

.....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI for R-1 to 5  
Mr. K K Sawhney, Advocate for R-6

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE  
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

**J U D G M E N T  
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**(ORAL)**

**(SANJEEV KUMAR J)**

1. The petitioner is aggrieved of and has called in question the order/judgment dated 26.11.2018, passed by the Central

Administrative Tribunal, Chandigarh Bench (Circuit Bench at Jammu) [hereinafter, to be referred as “**the Tribunal**” for short] in O.A. No. 061/00948/2017 titled “*Bharat Bhushan vs. Union of India & Ors.*” whereby, the Tribunal has allowed the abovementioned O.A, filed by Respondent No. 6 herein-Bharat Bhushan and consequently quashed the promotion order dated 07.10.2011 of the petitioner herein as land supervisor, with further direction to the official respondents herein to make the promotion to the post of land supervisor, strictly in terms of the recruitment rules, ignoring the element of merit and on the basis of seniority, subject to fitness, within a period of 03 months.

2. Before we advert to the grounds of challenge, we deem it appropriate to take note of brief resume of factual antecedents leading up to the filing of this petition, invoking Article 226 of the Constitution of India.
3. The petitioner vide Order No. 5492/EMP/GS(SD) dated 08.11.2022 was appointed as conservancy safaiwala in the office of Station Commander, Station Head Quarter, Jammu Cantt, Jammu C/O 56 APO in the pay scale of Rs. 2550-55-2660-60-3200 with a minimum pay scale @ Rs. 2550/-, whileas, Respondent No. 6 was appointed vide Order dated 69/SH/Emp/A dated 21.03.2001 on the same post. The terms and conditions of recruitment of the writ petitioner herein and Respondent No. 6 herein are admittedly

governed by the rules known as The Formation Headquarters & Station Staff Officer (Conservancy Staff) Recruitment Rules, 2003, as amended vide SRO 133 dated 20.12.2005 [hereinafter, to be referred as **“the recruitment rules”** for short]. In terms of recruitment rules, the conservancy safaiwala is entitled to be promoted to the next post of land supervisor. The land supervisor is a non selection post and is required to be filled up by way of promotion from amongst the conservancy safaiwalas possessing minimum five years’ regular service in the grade and who are able to write and read Hindi, English or Regional language. As per the recruitment rules, the promotion is to be made on the recommendations of Group-D Departmental Promotion Committee [hereinafter, to be referred as **“the DPC”** for short] consisting of Chairman-An officer of the rank of colonel, members- 3:2 officers of the rank of the Major/Captain and one Co-opted members for SC/ST/OBC.

4. With a view to filling up the post of land supervisor and to determine the eligibility of the candidates for such promotion, a language test was conducted by the DPC in which the writ petitioner along with Respondent No. 6 and three others participated. In the test, only the writ petitioner was found fit for promotion, whereas the others including Respondent No. 6 were declared unfit. Since, only the writ petitioner met the eligibility

requirements for promotion, as such, vide order dated 07.10.2011 he was promoted as land supervisor. The Respondent No. 6, though senior to the writ petitioner could not be appointed because of his lack of basic eligibility for such promotion.

5. Feeling aggrieved by the promotion of the writ petitioner herein, Respondent No. 6 filed OA No. 061/00948/2017 titled "*Bharat Bhushan vs. Union of India & Ors.*" before the Tribunal. The OA was contested by the writ petitioner herein as well as by the official respondents. The Tribunal vide order impugned dated 26.11.2018 accepted the OA of Respondent No. 6 and quashed the promotion of the writ petitioner herein made by the official respondents vide order dated 07.10.2011. The Tribunal concluded that the post of land supervisor was a non selection/promotional post and therefore the same could have been filled up on the basis of *inter se seniority* of the conservancy safaiwalas having five years of service in the grade and who are able to write and read Hindi, English or Regional language. The Tribunal also concluded that the promotion of the writ petitioner had been made on the basis of merit and ignoring the seniority of the conservancy safaiwalas. It is this order/judgment of the Tribunal which is assailed before us by the petitioner.
6. Mr. Satyajeet, learned counsel appearing for the petitioner submits that the Tribunal has committed glaring error in not appreciating

the fact that the promotion of the writ petitioner had been made on the ground that amongst all the conservancy safaiwalas, he was alone found eligible for promotion. He argues that the test in which the writ petitioner along with Respondent No. 6 and three others participated was conducted by DPC only to find out, as to whether the candidates for the post of land supervisor were having proficiency in reading and writing of Hindi, English or Regional language. He further submits that the test conducted by DPC and the merit determined therein was only for determining eligibility and was not aimed at determining any *inter se merit*.

7. Per contra, Mr. K K Sawhney, learned counsel appearing for Respondent No. 6 argues that the post of land supervisor, as per recruitment rules is a non selection post and therefore should have been filled up by way of promotion on the basis of strict seniority. He submits that Respondent No. 6 is senior to the writ petitioner in the cadre of conservancy safaiwala and was having more than five years of service. He further submits that Respondent No. 6 participated in the test also, though his merit in the test conducted by the DPC was lesser than that of the writ petitioner. He thus concludes by urging us to uphold the order of the Tribunal, which as per the learned counsel, has relied upon its earlier judgment rendered in OA No. 1236-HR-2011 titled "*Gurcharan Lal vs. Union of India & Ors.*", decided on 30.05.2013.

8. Mr. Vishal Sharma, learned DSGI appearing for the official respondents submits that though, the official respondents have chosen not to file an appeal, yet he is of the opinion that the impugned order passed by the Tribunal does not appreciate the correct position obtaining in the case. He therefore, does not support the order passed by the Tribunal.
9. Having heard learned counsel for the parties and perused the material available on record, we are of the considered opinion that the order/judgment passed by the Tribunal is completely flawed, both on facts and on merits. The Tribunal has failed to correctly read and understand the import of recruitment rules. Indisputably, the post of land supervisor under the recruitment rules is required to be filled up by way of promotion from the eligible conservancy safaiwala and a conservancy safaiwala to be eligible for such promotion must have five years of service in the grade and should be able to write and read Hindi, English or Regional language. Five years' service can easily be reckoned by having reference to the date of first appointment of the candidate as conservancy safaiwala, however, for determining the other eligibility, a test or examination is required to be conducted through DPC. In the test conducted by the DPC, no candidate other than the writ petitioner qualified. The test conducted by the DPC was to find out whether the candidates seeking consideration has sufficient knowledge of reading and

writing Hindi, English or Regional language. The DPC came to a conclusion that other than the writ petitioner, there was nobody eligible for promotion. Since, only the writ petitioner was eligible, as such, there is no question of making promotion on the basis of *inter se seniority* of the candidates seeking their promotion to the post of land supervisor. Had the Respondent No. 6 also qualified the test, for which respondents had fixed a benchmark, he being senior was undoubtedly entitled to be promoted to the post of land supervisor instead of the writ petitioner. Issue of seniority would have assumed importance where more than one candidate was eligible for promotion. The Tribunal has failed to appreciate this aspect of the matter and has erroneously come to the conclusion that the test conducted by the DPC was not to determine eligibility but was aimed at determining *inter se seniority*. Had the Tribunal perused the result sheet little carefully, it would have clearly found that in the last column of the result sheet, every candidate, except the writ petitioner had been declared unfit, meaning thereby, no candidate other than the writ petitioner was found to have the requisite knowledge of Hindi, English or Regional language. It needs to be noticed that Respondent No. 6 had not called in question the manner in which the test was conducted by the DPC, to know the knowledge of candidates in languages. In the absence of any challenge made to the conduct of the test, there was

absolutely no occasion for the Tribunal to enter into that aspect of the matter. The fact remains that promotion of the writ petitioner to the post of land supervisor in terms of order dated 07.10.2011 was not on the basis of his merit obtained in the test conducted by the DPC, but was on the ground that the writ petitioner was the only candidate meeting the twin eligibility requirements i.e. five years service in the cadre and ability to read and write Hindi, English or Regional language.

- 10.** For the foregoing reasons, we find merit in this petition and the same is accordingly allowed. **The impugned order/judgment dated 26.11.2018 passed by the Tribunal is quashed.** As a result, O.A. No. 061/00948/2017 filed by Respondent No. 6 before the Tribunal is also dismissed.

**(Mohan Lal)**  
**Judge**

**(Sanjeev Kumar)**  
**Judge**

JAMMU  
18.10.2023  
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**Whether the order is speaking : Yes/No**

**Whether the order is reportable : Yes/No**