

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-17321-2021 (O&M)

Reserved on: 19.01.2023

Date of Decision: 02.02.2023

Chandigarh Administration and others

. . . . Petitioners

Vs.

Mahipal Singh and another

. . . . Respondents

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present: - Mr.Sumeet Jain, Advocate,
for the petitioners.

Mr.Puneet Gupta, Advocate,
for the respondent No.1.

M.S. RAMACHANDRA RAO, J.

The background facts

This Writ Petition is preferred by the Chandigarh Administration and others challenging the order dt.28.11.2020 passed by the Central Administrative Tribunal (respondent No.2) [hereinafter referred to as 'the Tribunal'] in OA-060/00648/2019.

Respondent No.1 herein had approached the Tribunal for quashing of an order dt.11.06.2019 read with Advice dt.13.06.2018 and advertisement dt.14.06.2019 by which claim of respondent No.1 for promotion as Senior Scale Stenographer was declined and the post was sought to be filled by way of direct recruitment by reserving it for Scheduled Caste category by

the State Consumer Disputes Redressal Commission, Union Territory, Chandigarh [petitioner No.2].

Respondent No.1 was appointed as Steno Typist on 24.01.2005 in the pay scale of ₹3300-6200.

The next promotional post is the post of Senior Scale Stenographer, which is governed by Chandigarh State Commission and District Fora, UT Chandigarh Group 'C' and 'D' Service Regulations, 2004 [for short 'the Regulations'] notified on 01.10.2004.

As per the Regulations, 4 posts of Senior Scale Stenographers were to be filled up *by promotion failing which by direct recruitment*.

The promotion was to be from amongst the Junior Scale Stenographers with 5 years of regular service in the category as Junior Scale Stenographer and possessing speed of 120 words per minute in Stenography and 30 words per minute in transcribing the same. If no post of Junior Scale Stenographer exists in the Department, then from amongst the Steno Typists having 10 years of regular service of Steno Typist in the cadre and possessing speed of 120 words per minute in Stenography and 30 words per minute in transcribing the same.

It is not in dispute that there is no post of Junior Scale Stenographer in the department where he is serving and only one post of Steno Typist is there.

Prior to 2004, the post of Senior Scale Stenographer was filled by direct recruitment as no one was eligible as Junior Scale Stenographer with requisite service and thus, direct recruits were appointed in 1999, on 23.03.2001, 05.12.2003 and 05.12.2003, respectively under General category.

It is also not disputed that on promotion of these four persons, four new direct recruits were appointed as Senior Scale Stenographers.

Ultimately on promotion of a direct recruit namely Chander Mohan, one incumbent immediate senior to applicant Mr.Ashish Sharma, was promoted as Senior Scale Stenographer on 09.01.2009 in accordance with the Regulations.

Thereafter one Jora Singh, a direct recruit Senior Scale Stenographer, had resigned in the month of June, 2017 and therefore, post became available for being filled up.

Since respondent No.1 was the only and senior most incumbent available and eligible for consideration for promotion, who had more than 14 years of service, he made a representation on 17.07.2018 to consider his case for promotion as Senior Scale Stenographer against the post which had fallen vacant in June, 2017.

But vide order dt.11.06.2019, it was decided that sole post of Senior Scale Stenographer is to be filled up by direct recruitment amongst Scheduled Caste candidates as per Advice of the Chandigarh Administration in their letter dt.13.06.2018.

Thereafter, the impugned advertisement dt.14.06.2019 was issued inviting applications for filling up by direct recruitment one post of Senior Scale Stenographer reserved for Scheduled Caste and the qualification was further prescribed.

Contentions of respondent no.1/applicant in OA

Respondent No.1 contended that the said vacancy of Senior Scale Stenographer cannot be treated as a backlog Scheduled Caste category vacancy

and a direction be issued to the petitioners to consider and promote him to the said post from the due date with all consequential benefits.

The stand of the petitioners/State

Petitioners No.1 to 3 filed a reply contending that the post of Senior Scale Stenographer is to be filled through direct recruit amongst reserved category candidates as per roster duly approved by the Social Welfare Department, UT, Chandigarh and since respondent No.1 belonged to the General Category, the matter was taken up with the Chandigarh Administration for the dereservation of the post, but the Chandigarh Administration advised on 13.06.2018 that the recruitment/appointment in a post/cadre in department is to be done strictly as per the provisions contained in notified Rules/Regulations and in case reserved category (SC) official is not available for promotion to the post of Senior Scale Stenographer, the same (backlog vacancy) may be filled up by following another method of recruitment i.e. direct recruitment.

It is therefore, contended that the impugned advertisement was given for filling of the vacancy of Senior Scale Stenographer by calling applications from Scheduled Caste candidates and since there was no such candidate available in the feeder cadre for promotion as Senior Scale Stenographer, action was taken to fill it up by direct recruitment.

The order in the OA of the Central Administrative Tribunal

By order dt.28.11.2020, the Tribunal allowed the said OA.

It observed that the petitioners admitted that the post of Senior Scale Stenographer became vacant on transfer of Joga Singh in 2017; they have to follow the method provided in the Rules/Regulations for filling up the said post, and the Regulation clearly provides that the post is to be filled up by

way of promotion failing which by direct recruitment; under a wrong impression, the petitioners formed an opinion that the post is to be filled up by way of reservation in promotion from Scheduled Caste category; and since a person from that category is not available, it may be filled up from Scheduled Caste category from open market by direct recruitment; and this is not permissible under the Rules/Regulations.

It held that normally reservation in promotion is not permissible unless an exercise is carried out in terms of law laid down by Supreme Court in *M. Nagaraj Vs. Union of India*¹ as reiterated in *Jarnail Singh Vs. Lachhmi Narain Gupta*². It held that reservation is not required in cases of promotion and the petitioners were in confusion after decision of Supreme Court was brought to their notice by respondent No.1; and suddenly a decision was taken that if a post remains vacant for more than 2 years, it may lapse and so it may be filled by direct recruitment as a backlog vacancy.

It held that the petitioners were trying to provide reservation in appointment against a post which is to be filled up by way of promotion, indirectly, which they could not do directly, which is not permissible.

It held that if a Statute prescribes a thing to be done in a particular manner, it should be done in that manner or not at all and when the post of Senior Scale Stenographer is available and a person like respondent No.1 is eligible and available, there being no reservation in promotion, the petitioners cannot fill up the posts by direct recruitment just to ensure that it is filled up by way of direct appointment to fulfil the roster points.

¹ (2006) 8 SCC 2012

² (2018) 10 SCC 396

It directed consideration of the case of respondent No.1 for promotion to the post of Senior Scale Stenographer from the due date and if found fit to grant him promotion as such with all consequential benefits within two months from the date of receipt of copy of its order.

Challenging the same, this Writ Petition has been filed.

Contentions of the petitioners

It is the contention of the petitioners in the Writ Petition that 15% reservation to the members of the Scheduled Caste had been provided in the matter of promotion. For direct recruitment to the posts under the Chandigarh Administration, Scheduled Castes from all over India would be eligible for benefit of reservation on the pattern of the Central Government; as per roster register maintained by the Director, Social Welfare UT, Chandigarh, there was a backlog of 1 number of post on the post of Senior Scale Stenographer under the Scheduled Caste category.

It is contended that the Tribunal erroneously held

- (i) that reservation in promotion is not permissible;
- (ii) that under the Rules/Regulations it is not permissible to fill the vacancy from direct recruitment in case person is not available from Scheduled Caste category;
- (iii) that Scheduled Caste category candidate was not available from the feeder cadre for the post of Senior Scale Stenographer and only option left was to fill the vacancy through direct recruitment as per the Rules/Regulations.

It is contended that the judgment in *Jarnail Singh* (2 Supra) was misread by the Tribunal since the said judgment categorically held that

quantifiable data should be collected by the State on the parameters as stipulated in the case of *M. Nagaraj* (1 Supra) on the inadequacy of representation, which can be tested by the Courts and that the data would be relatable to the concerned cadre.

It was pointed out that in the department there are 3 posts of Steno Typists and 4 posts of Senior Scale Stenographer; that there was only 1 vacancy in the post of Senior Scale Stenographer; all the employees working are from General category including 1 Steno Typist, who is from handicapped quota; and *till date no post had been filled in the cadre from the reserved category*. It is stated that in the concerned cadre there is an inadequacy of representation of the Scheduled Caste category persons.

It is also pointed out that the Tribunal erred in holding that the petitioners were trying to provide reservation in appointment against a post which is to be filled up by way of promotion indirectly, which they could not do directly. It is stated that the Rules/Regulations specifically provide that mode of appointment to the post of Senior Scale Stenographer is by way of promotion failing which by direct recruitment.

The petitioners have filed along with the Writ Petition a Memo dt.07.11.2017 (P-10) addressed to the Secretary, State Consumer Disputes Redressal Commission, Chandigarh by the Director, Social Welfare, Chandigarh Administration intimating that Roster register in respect of staff was checked and the backlog position was mentioned therein and *in respect to the post of Senior Scale Stenographer to be filled up by promotion, 4 posts exist of which one was a Scheduled Caste backlog vacancy. The said annexure also shows that all 4 posts of Senior Scale Stenographer had been filled by 4*

persons from General category in the year 2004 and thereafter also when those posts fell vacant, only General category persons were appointed therein.

According to the counsel for the petitioners, at no point of time in the past was a Scheduled caste category person appointed to the post of Senior Scale Stenographer and thus there is inadequate representation of the Scheduled Caste category persons in the cadre.

Contention of counsel for the respondent

The counsel for the respondent supported the order of the Central Administrative Tribunal and sought dismissal of the Writ Petition.

Consideration of this Court

From the Memo dt.07.11.2017 (P-10) addressed to the Secretary, State Consumer Disputes Redressal Commission, Chandigarh by the Director, Social Welfare, Chandigarh Administration referred to above it is clear that at no point of time, a person of Scheduled Caste category was appointed to the post of Senior Scale Stenographer by promotion or by direct recruitment from 2004.

Thus petitioners have placed on record data proving inadequacy of representation of Scheduled Caste in the cadre of Senior Scale Stenographer justifying the course of action adopted by them.

The respondent did not controvert the said data.

It cannot therefore be denied that there was inadequate representation of Scheduled Caste category persons in the said cadre.

When the law permits reservation for Scheduled Caste category persons when there is inadequacy of representation of such persons in the cadre where data relatable to the said cadre is available, it cannot be said that

the petitioners had acted illegally in earmarking the post of Senior Scale Stenographer for Scheduled Caste category person and they ought to have continued to promote persons like respondent No.1, who belonged to the General category, like in the past, defeating Article 16(4A) of the Constitution of India.

The view taken by the Tribunal that the petitioners were trying to provide reservation in appointment against the post which is to be filled up by way of promotion indirectly which they cannot do directly, is incorrect, since the Regulations specifically permit filling up a post by direct recruitment if they cannot do so by way of promotion. It appears that the attention of the Tribunal was not drawn to these Regulations dealing with filling up of the post of Senior Scale Stenographer.

We thus do not find any illegality committed by the petitioners in proposing to fill the vacancy falling in the cadre of Senior Scale Stenographer through direct recruitment when Scheduled Caste category candidate was not available from the feeder cadre of Steno Typist by way of promotion, and when no person of the Scheduled Caste category had been appointed in the past ever since 2004, and there is inadequate representation of the said persons in the Senior Scale Stenographer cadre.

Conclusion

Therefore, the Writ Petition is allowed; the judgment dt.28.11.2020 in OA-060/00648/2019 of the Tribunal (respondent No.2) is set aside, and the said OA is dismissed.

Since one more vacancy of Senior Scale Stenographer fell vacant subsequently on the promotion of Sh. Sunil Dutt, Senior Scale Stenographer to

the post of Personal Assistant and since the respondent No.1 was then promoted to the said post on 10.09.2021, no prejudice is caused to respondent No.1 by this order.

Pending application(s), if any, shall stands disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

02.02.2023
Vivek

(SUKHVINDER KAUR)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |