

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.15327 of 1993

DATE OF DECISION: 26.3.2015

Ramji Dass Nagpal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. R.S. Dadwal, Advocate for
Mr. R.K. Sharma, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

DAYA CHAUDHARY, J.

The present petition has been filed under Article 226 of Constitution of India for issuance of a writ in the nature of certiorari and for quashing decision taken by respondent No.1, communicated to the petitioner through respondent No.2 vide memo dated 26.11.1993 (Annexure P-3), whereby, it has been decided to fill up the vacancy in the cadre of Superintendent in the office of respondent No.3 on divisional basis instead of State level.

The facts of the case as mentioned in the petition are that the petitioner initially joined office of Deputy Commissioner, Hisar as a Clerk in the year 1960 and thereafter was promoted as Assistant in the office of

Commissioner, Hisar Division, Hisar in the year 1975 and further as Assistant Superintendent (R&J) in the office of respondent No.2 w.e.f 16.5.1986. The next promotion from the post of Assistant Superintendent (R&J) is to the post of Superintendent in the office of Commissioner which is governed by Statutory Rules framed by the State of Haryana under proviso to Article 309 of the Constitution of India known as The **Haryana Revenue Department Divisional Subordinate (Group 'B') Service Rules, 1988** (hereinafter referred to as 'the Rules, 1988) notified in the official gazette on 11.7.1989. The case of the petitioner was recommended for promotion in the month of September, 1993 but subsequently he received a communication whereby it was informed that the post of Superintendent in the Divisional Commissioner office is a divisional cadre post which is to be filled up as per the Rules, 1988 from amongst the Superintendents of Deputy Commissioner's Office of the Division concerned and Assistant Superintendents, Personal Assistants to the Divisional Commissioner. It was also mentioned that no official can be promoted to the post who belongs to other Division.

The petitioner along with others made representation but no action was taken and thereafter the present petition was filed.

Learned counsel for the petitioner contends that the petitioner was eligible to be considered for promotion to the post of Superintendent but still he was not considered. The post of Superintendents in the office of Commissioner is of State Cadre and the Appointing Authority of the said post is the Government and accordingly that post can be filled up only on Divisional level by taking into consideration the incumbents of the feeder cadre of a particular Division as and when the vacancy was available. Learned counsel further submits that the decision which has been communicated to the petitioner is not only illegal but unlawful as well. The

post of Superintendent is to be filled up on Divisional level and the impugned order is violative of Articles 14 and 16 of the Constitution of India as petitioner being senior most Assistant Superintendent in the State is eligible as per Rules and has been ignored by misinterpreting the Statutory Rules.

Reply on behalf of respondent-State has already been filed, which is on record.

Learned counsel for the respondent-State submits that the controversy in the case is governed by the Rules, 1988, which would show that the post is of Divisional level. As per Rule 7 of said Rules, the recruitment to the post of Superintendent is to be made by promotion from amongst the Superintendents of Deputy Commissioner's office or Assistant Superintendents (Revenue and Judicial) and Assistant Superintendents (General) or the Personal Assistants to the Commissioner or by way of transfer on deputation. The claim of the petitioner has rightly been declined as the post of Superintendent of Divisional Office is of Divisional cadre only and he has no legal right to be considered for promotion to the post of Superintendent. The petitioner belongs to Divisional Commissioner's office Hisar Division, Hisar and no junior to him has been promoted. The petitioner cannot be considered eligible for promotion against post belonging to the cadre of another Division and his seniority cannot be considered in that cadre. The seniority of Assistant Superintendent is to be considered at the level of his Division. The post had fallen vacant on account of retirement of one Puran Kumar, Superintendent of the office of Commissioner, Rohtak Division, Rohtak, which belongs to the cadre of Divisional Office, Rohtak Division, Rohtak, whereas, the petitioner belongs to Divisional Commissioner Office, Hisar and he cannot be considered to be eligible for promotion against that

vacancy. Keeping in view the seniority of the Division level one Mr. Ashok Kumar who was senior most Assistant Superintendent (Revenue and Judicial) belonging to Divisional Commissioner office, Rohtak was considered and appointed as Superintendent as per rules.

Heard the arguments advanced by leaned counsel for the parties and have also gone through the impugned order and other documents available on the file.

The grievance of the petitioner in the present petition is that representation moved by him for considering him to the post of Superintendent has wrongly been rejected, whereas, Amended Recruitment Rules, 1989 are applicable in case of promotion to the post of Superintendent. The post of Superintendent is Divisional cadre post and all the Assistant Superintendents serving in office of Commissioner's office are eligible for promotion as Superintendent irrespective of their Division. While declining the claim of the petitioner, it has been stated that the post of Superintendent is a Division cadre and petitioner cannot be considered on the basis of his seniority at State level and he cannot be said to be the senior most Assistant Superintendent.

Now the issue for consideration by this Court is as to whether the petitioner is to be considered for promotion to the post of Superintendent in another Division keeping in view the Rules applicable with regard to promotion to the post of Superintendent or not. Rules, 1988 as notified in official gazette on 11.7.1989 are applicable in the present case. Rule 7 (1) of said Rules is relevant for recruitment to the post of Superintendent, which is reproduced as under:-

“Method of recruitment “7 (I). Recruitment to any post in the Service Recruitment shall be made;.

(a) by promotion from amongst,-

- (i) the Superintendents of Deputy Commissioner's office; or
- (ii) the Assistant Superintendents (Revenue and Judicial) and Assistant Superintendents (General); or
- (iii) the Personal Assistant to the Commissioner, or
- (b) by transfer or deputation of an officer/official already in the service of any State Government or the Government of India.
- (2) All promotions shall be made on seniority-cum-merit basis and seniority alone shall not confer any right to such promotions."

As per Appendix B, the academic qualification and experience for appointment to the post of Superintendent by promotion or by transfer for the post of Superintendent is as under:-

Sr. No.	Designation of posts	Academic qualifications and experience, if any, for appointment by promotion or by transfer.
1.	Superintendent	a) Three years experience as Superintendent in the Deputy Commissioner's office. b) Five years experience as Assistant Superintendent (General) or Assistant Superintendent (Revenue and Judicial). c) Five years experience as Personal Assistant to Commissioner and have shared the work of Assistant Superintendent (General) or Assistant Superintendent (Revenue and Judicial) whether wholly or partly for at least two years.

As per Rule 7 (1) of the Rules, 1988, the Assistant Superintendent (Revenue and Judicial) and Assistant Superintendent (General) are to be considered to the post of Superintendent. The post of Superintendent became vacant on 31.11.1993 in Rohtak Division. The petitioner made representation on 1.9.1993 to Commissioner, Hisar Division to consider his case for promotion but it was declined on the ground that no official of other Division can be promoted as seniority of Assistant Superintendent (Revenue and Judicial) is at the Divisional level

only and his seniority cannot be considered in another Division. Learned counsel for the petitioner has not been able to show any document to prove that the seniority of the petitioner at State level is required to be considered for promotion to the post of Superintendent as well and accordingly his case cannot be considered for promotion in another Division as seniority of the petitioner is relevant in his own Division itself.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

26.3.2015
pooja

(DAYA CHAUDHARY)
JUDGE