

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2345 of 2014

DATE OF DECISION: AUGUST 21, 2015

UNION OF INDIA & OTHERS

...PETITIONERS

VERSUS

MANOJ KUMAR & ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. VIVEK SINGLA, ADVOCATE FOR THE PETITIONERS
MR. O.P.SHARMA, ADVOCATE FOR RESPONDENT NO.1.

M. JEYAPPAUL, J.

1. Aggrieved by the direction issued by the Central Administrative Tribunal, Chandigarh Bench (for short 'the Tribunal') to consider the case of respondent No.1 herein for promotion as Upper Division Clerk (for short 'UDC'), the petitioners have filed the present writ petition.

2. Respondent No.1 Manoj Kumar was appointed as Hindi Typist in Defence Estates Organization on temporary basis as per order dated 11.6.2001 found appended as Annexure P-8. Learned counsel appearing for respondent No.1 drew the attention of the Bench to paragraph 4 of the order of appointment issued to respondent No.1 wherein it has been stipulated "you will be on probation for two years from the date of appointment". There is no dispute to the fact that respondent No.1 was appointed only after conducting a merit test. In other words, he had not entered into the defence Estates Organization through backdoor.

3. The fact remains that the Defence Estates Organization never cared to declare his probation immediately after the expiry of 2 years from the date of appointment as clearly articulated in paragraph 4 of the order of appointment issued to the 1st respondent.

4. Learned counsel appearing for the writ petitioners referring to Defence Estates (Group 'C' and 'D' posts) Recruitment Rules, 1988 which is applicable to respondent No.1 who was appointed on 11.6.2001 submitted that as per the above Rules, 75% of the vacancies in the post of Upper Division Clerk are to be filled up by non-selection and 25% by selection. 75% of the vacancy shall be filled up by promotion from Lower Division Clerks who have got 8 years of experience in the grade while 25% by selection shall be filled up by conducting Limited Departmental Competitive Examination of such Lower Division Clerks who have rendered 5 years of regular service, provided they have not crossed the age of 45 years. Quoting the Rules applicable to respondent No.1, learned counsel appearing for the petitioners would vehemently contend that a decision has been rightly taken by the petitioners that respondent No.1 was ineligible to get promotion through Limited Departmental Competitive Examination as he had not rendered any regular service.

5. To meet the above submission made by learned counsel appearing for the writ petitioners, the relevant sequence of events in this case will have to be dealt with by us. Respondent No.1, in fact, applied for promotion through selection by conducting Limited Departmental Competitive Examination under Annexure A-9. Respondent No.1 was

shown at S.No.3 in the list of candidates eligible for participating in the Limited Departmental Competitive Examination for the promotion post of UDC. Paragraph 5 of Annexure A-9 would read “Shri .Balbir Singh LDC of DEO Jammu, is not eligible to appear in the aforesaid Limited Departmental Competitive Examination being overage”. It would go to show that the petitioners in fact found respondent No.1 eligible to participate in the Limited Departmental Competitive Examination for promotion by selection. In fact, one of the Lower Division Clerks, namely, Sh.Balbir Singh was found ineligible. In other words, the candidature had been thoroughly analyzed beforever the candidates were permitted to appear for the Limited Departmental Competitive Examination.

6. There is no dispute to the fact that respondent No.1 cleared the Limited Departmental Competitive Examination held and as a consequence, he crossed the benchmark.

7. Respondent No.1 had put in 7 years of service at the time when he was called to appear in the Limited Departmental Competitive Examination. In the above facts and circumstances, we are of the considered view that respondent No.1 was deemed to have been regularized in service not only account of the fact that his probation was not considered immediately after the expiry of 2 years from the date of his joining service as per the terms of appointment, but also on account of the permission granted to respondent No.1 to take Limited Departmental Competitive Examination having found him eligible for the post of UDC.

8. For all these reasons, we find that the petitioners have unfairly

treated respondent No.1 in the matter of appointment to the post of UDC. Learned Tribunal has rightly intervened and passed an order quashing the impugned order passed by the petitioners on 1.12.2010. The Departmental Promotion Committee should consider the candidature of respondent No.1 for promotion as UDC. Respondent No.1 should be promoted if he is found otherwise fit within 2 months from the date of this order.

9. The writ petition stands dismissed.

(M. JEYAPPAUL)
JUDGE

August 21, 2015
Gulati

(DARSHAN SINGH)
JUDGE