IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3353 of 1998
Date of Decision: 27.8.2016

Ram Kishan ... Petitioner

Versus

State of Haryana and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Nitin Rathee, Advocate,
for the petitioner.

Ms. Shruti Jain Goel, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. This is a matter involving promotion. The petitioner was Statistical Assistant appointed in the Department of Employment, Haryana in November 1981 on the recommendation of the Haryana Subordinate Services Selection Board. He was an Ex-Serviceman who came to Civil Service firstly as Programme Assistant in the Department of Animal Husbandry, Haryana joining that post in August 1973. Military Service is not involved in this case. He later shifted to the Department of Employment Haryana on appointment as Statistical Assistant which is the situs of the promotion dispute. The claim is for promotion as Assistant Employment Officer (General) to which higher post there are two feeder promotion categories. There is direct recruitment also to the higher post with which we are not concerned.

2. The moot Rule 9 (1) (b) of the Haryana Employment Department (Group-B) Service Rules, 1991 (for short "Rules") provides for the method of recruitment by way of promotion to the post of Assistant

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Employment Officer (General) (for short "AEO") from the feeder categories of Head Assistants and Statistical Assistants/Technical Assistants (for short "SA/TA") working in the Department of Employment Haryana. The petitioner belongs to the category of SA/TA being a Statistical Assistant.

3. Twenty Five percent of the posts of AEO are filled by promotion from amongst Head Assistants and Statistical Assistants/Technical Assistants in the ratio of 60:40 (3:2). The sanctioned cadre strength of AEOs on the date of filing of the petition was 73 posts. Accordingly, 12 posts have been earmarked for the category of Head Assistant and 7 posts for Statistical Assistant by promotion and remaining 54 posts are meant for direct recruitment in terms of Rule 9. Thus far there is no dispute and it is common ground. The dispute is with respect to the fixing of ratio. Of the 19 posts falling to the promotion quota it is argued that the ratio has to be divided between Head Assistants on the one side and SA/TA on the other in the ratio of 3:2. If this ratio is applied then the share of Head Assistants would work out to in decimals 11.4 and of ST/TA; 7.6. Therefore, according to the petitioner, 8 posts are to fall to the share of SA/TA and only 11 posts should go to the category of Head Assistants for the purpose of promotion, while the department has divided quota 12:7. If this ratio is applied then the petitioner could not have been ignored for promotion as against respondent Nos.3 to 6. To remind, the petitioner belongs to the category of Statistical Assistants. Before the case is taken forward it would be necessary to read Rule 9 of the Rules which provides the method of recruitment to the services and prescribes as follows:-

> *"9. <u>Method of recruitment</u> : (1) Recruitment shall be made to the Service:-*

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(a) in the case of District Employment Officer :

(i) by promotion from amongst Assistant Employment Officers (General) and Assistant Employment Officer (Vocational Guidance) ; or

(ii) by transfer or deputation of an officer already in the service of any State Government or the Government of India.

(b) In the case of Assistant Employment Officer (General) :

(i) 25% by promotion from amongst Head Assistants and Statistical Assistants/Technical Assistants in the ratio of 60:40.

(ii) 75% by direct recruitment; and

(iii) by transfer or deputation of any officer already in the service of any State Govt. or the Govt. of India; and

Note:- Appointment by direct recruitment should be made on the basis of combined competitive examination conducted by the Commission for recruitment of the Haryana Civil Service (Executive Branch) and Allied Services.

(c) In the case of Assistant Employment Officer, (Vocational Guidance) :-

(i) by direct recruitment, or

(ii) by transfer or deputation of any officer already in the service of any State Government or the Government of India.

(2) All promotions shall be made on the basis of seniority-cum-merit and no person shall be entitled to claim promotion on the basis of seniority alone."

4. The rule classifies the feeder categories in the case of Assistant Employment Officer (General) in two independent groups. Head Assistants for one, and SA/TA the other. Sixty per cent of 25% posts would go to Head Assistants and the balance to the two clubbed posts, SA/TA. The petitioner falls in 40% of 25% promotion quota. More or less the case becomes an arithmetical computation depending on method of calculation of posts/vacancies in the setting of the rules.

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5. The State has assumed in its written statement and in the documents attached thereto that 12 posts have been earmarked for the category of Head Assistants and 7 posts for Statistical/Technical Assistants while 54 posts fall to the share of direct recruitment. The cadre of AEO being 73 creates difficulty since it is an odd number which is not divisible equally. If we were to divide 73 posts in the ratio of 25%:75% then the percentage actually works out to 18.25 and 54.75. If we adopt the process of rounding off by factions then 18.25 ought to be 18 while 54.75 ought to be 55 posts. But 18 have been treated as 19 posts falling to the share in the 25% promotion quota divided between the two groups of posts but even the petitioner has agreed to the method of rounding off adopted by the Government to mean 19 posts falling to the share of promotees to be further divided in the ratio of 60:40. The complaint is that since the commencement of the new rules in 1991, 20 persons were promoted by the department as AEOs. However, out of those 20, only 4 Statistical Assistants were given promotion on the post of AEO whereas 16 Head Assistants stood promoted which in excess of quota and as such the action of the department is arbitrary and against the mandatory provisions of the Rules in ignoring the petitioner for promotion as AEO. The petitioner asserts that promotions are to be made on roster basis against these 19 posts. This assertion is in para.6 of the petition.

6. In reply to para.6, the department has replied as follows:-

> *"6. That para 6 of the writ petition is wrong and hence denied. It is submitted that out of total strength comprising of 73 posts of Assistant Employment Officers, 19 posts have been earmarked for departmental quota. Accordingly, all the 7 posts falling in the share of Statistical Assistants as*

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> *per percentage of quota carved out for the category of Statistical Assistants have already been filled up from amongst the Statistical Assistants. The position stated in preliminary objection 1 above is reiterated."*

7. The categorical stand of the State in para.6 and paras.12 & 13 of the written statement is repeatedly that the petitioner is wrong in asserting that only 4 Statistical Assistants were promoted and in fact 7 persons were. It is also asserted in para.12 that the question of considering the petitioner for promotion did not arise as one Sh. Gopi Chand, SA who is senior to the petitioner in his cadre is already awaiting promotion against the departmental quota allocated for the category of Statistical Assistants, as was the position when the writ was filed. It is asserted in para.18 of the reply filed by the department that out of 12 posts meant for Head Assistants, 4 posts falling to their share were lying vacant as on the date of reply i.e. April 16, 1998 and would be filled up from amongst Head Assistants. Since the posts in their quota stands filled up the petitioner has no legitimate right to claim promotion as AEO.

8. It may be noted that the petitioner has not filed a replication to rebut the averments made by the department and those would have to be accepted as true and faithful to the record. The burden was on the petitioner to show prima facie that he was wrongly bypassed for promotion in an illegal and arbitrary manner contrary to rules but he has been unable to discharge the burden satisfactorily. Once the petitioner accepts that the post-wise quota is 19 posts for both the groups, i.e. HA and SA/TA then he cannot be heard to argue on fractions and principle rounding them off. Meaning thereby, fractions in respect of quota of 25% should be read

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differently to the fractions in the total number of posts of AEO. There is no doubt that there is inherent difficulty in working out mathematically the splitting up of posts on even numbers against a cadre strength of 73 posts which is an odd number and, therefore, I would not find any justification in the assertion of the petitioner made at the time of issuance of notice of motion on March 09, 1998 that the share would come in the ratio of 11.4 and 7.6 and that 7.6 will be rounded off to 8 posts. If the principle is accepted then it follows logically why the cadre of 73 posts be not distributed in the ratio fixed in the rules as 25% and 75% (promotion quota and direct quota) and divide that figure with mathematical exactitude as 54.75 for direct recruitment and 18.25 for promotion quota and round them off by the same logic as 55 and 18 and accordingly add 1 post to the direct quota i.e from 54 to 55 thereby causing loss to both the promotion categories of HA & SA/TA. Would this method not balance out the principle of rounding off suitably?. But since neither of the parties reads the rule differently from the manner in which the department does on the total cadre strength then the Court accepts the administrative decision that there are 19 posts in the share of the petitioner and the private respondents to be divided by 60:40 formula in the ratio of 12:7 posts. If direct recruits have lost 1 post the promotees have gained one which balances out equitably the competing interests of HAs & SA/TAs in a fair and equitable manner and the grievance of the petitioner thus cannot be viewed with mathematical precision or like the Euclid's theorem. This is the bane and the problem while dealing with odd numbers of posts and availability of manpower from different sources, sub-classification amongst feeder cadres in promotion

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quota and direct recruits. One cannot chop an arm here or a leg there to distribute 73 posts equally from three sources.

9. I would, therefore, find nothing palpably wrong or arbitrary in the impugned order dated February 17, 1998 passed by the Commissioner & Secretary to Government of Haryana, Labour & Employment Department in making an order in implementation of the non-committal directions of this Court not expressing opinion in CWP No.17469 of 1997 filed by the petitioner when disposing it off with a direction to the respondents to decide the representation submitted by the petitioner in accordance with law. It is recorded in the order that 7 posts of AEO (General) have been filled up through promotion from SA/TA to which category the petitioner belongs. The share is replete to the prescribed percentage as applied by the department to which the petitioner does not dispute at 19 posts for both categories.

10. The petitioner's argument is built on the foundation in the pleaded case that promotion should not be given on the basis of total number of posts, rather on the basis of vacancies is fallacious even while during the oral hearing reliance was placed on the Supreme Court ruling in State of Punjab and others v. Dr. R.N. Bhatnagar and another, (1999) 2 SCC 330. The Supreme Court considered its earlier rulings, amongst others, of the Constitution Bench in R.K. Sabharwal and others v. State of Punjab, (1995) 2 SCC 745 on the interpretation of working of the roster. The roster in *Sabharwal* was a reservation roster (General & Scheduled Caste) which is somewhat different from roster based on quota rule and rule which prescribes quota for recruitment to a cadre from different sources and thus

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in *Bhatnagar* the Supreme Court held that the replacement theory in *Sabharwal* at the stage of retirement or further promotion "... may not be very relevant because retirement from service may not follow the quota rule". Therefore, while making recruitment quota rule is required to be strictly adhered to. That was what was meant, it was held in *Bhatnagar*, referring to the earlier SCI decision in Paramjit Singh and others v. Ram Rakha and others, (1975) 3 SCC 478 that "the quota rule will apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota". In *Bhatnagar* the Supreme Court held that the principle in *Sabharwal* does not apply since the Court in *Sabharwal* was concerned with the scheme of reservation under Article 16(4) of the Constitution. So also the ratio in Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association and others, 1998 (2) RSJ 671 would also not apply in a non-reservation roster while deciding the question of working out the recruitment rule for appointment from two sources of promotees and direct recruits. It is only Article 16(1) which would hold the field, uninhibited by the exceptional category carved out from sub Article (1) of Article 16 by sub Article (4) thereof. In *Bhatnagar* there was a quota-rule which provided for filling 'vacancies' in the cadre by promotees and direct recruits in the ratio of 3:1. Once direct recruits and promotees are absorbed in one cadre, they form one class and cannot be discriminated for the purpose of further promotion. The roster in *Bhatnagar* provided in the rule of appointment to the post of Professor should be followed every time a vacancy arises. In *Bhatnagar* the cadre of Professors (Ophthalmology) was rather small of no more than 5

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posts in the Medical College at Patiala. In these facts the Supreme Court held that the word "post" in rule 9 (1) (d) of the Punjab Medical College Education Service (Class I) Service Rules, 1978 for appointment of Professors from two sources i.e. direct recruits and promotees refers to "vacancies" and not the total number of posts (5 in number) in the cadre. The roster itself was vacancy based which is not the case in the instant petition. The contention of the learned counsel for the petitioner based on vacancies and not posts is not sustainable and is rejected for the reasons recorded above.

11. In the present case, there is no *inter se* roster for promotees and direct recruits. There is quota but no rotation of vacancies and, therefore, *Bhatnagar* does not apply and is distinguishable on facts, the rule position being different. In any case, the share of SA/TA was replete when the cause was brought to this Court for determination so the question is rendered academic.

12. I find no valid or cogent reason to allow this petition for any of the reasons pleaded by the petitioner or addressed during the oral arguments and instead would commend the dismissal of this petition being devoid of merit. It is, accordingly, dismissed. Parties will bear their own costs.

(RAJIV NARAIN RAINA)
JUDGE

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Whether speaking/reasoned Yes

Whether reportable Yes

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