

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

CWP No. 13357 of 2016

DATE OF DECISION : 14.09.2016

Bhupinder Singh Hira and another

.... PETITIONERS

Versus

Prem Chand Guleria and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. V.K. Sharma, Advocate,
for the petitioners.

Mr. H.S. Saini, Advocate,
for respondent No.1.

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RAMENDRA JAIN, J.

1. Petitioners Bhupinder Singh Hira and Harinder Kaur, who are reserved category employees of the Post Graduate Institute of Medical Education and Research (for short 'PGIMER'), Chandigarh (respondent No.2 herein), have filed this petition under Articles 226/227 of the Constitution of India challenging the order dated 24.05.2016/31.05.2016 (Annexure P-7) rendered by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal'), whereby the Original Application (O.A. No. 060/00820/ 2015) filed by Prem Chand Guleria (respondent No.1 herein), a general category employee of the PGIMER, seeking the benefit of 'Catch-up Rule' has been allowed.

2. Briefly stated, respondent No.1 joined the service of PGIMER as Junior Scale Stenographer on 17.07.1980 and was promoted as Senior

Scale Stenographer on 25.05.1984. Petitioner No.1 joined as Junior Scale Stenographer on 17.05.1989 and having qualified the test, he was appointed as Senior Scale Stenographer on 25.09.1990. Petitioner No.2 joined as Senior Scale Stenographer on 13.10.1990. Thereafter, in view of the Recruitment Rules, vide order dated 04.12.1993, both the petitioners were promoted to the post of Personal Assistant under the reserve category, whereas respondent No.1 was promoted to the said post vide order dated 09.08.1997. The seniority list of Personal Assistants was circulated on 30.09.2001 showing the petitioners as senior to respondent No.1. However, upon the implementation of 2nd Cadre Review of the PGIMER with effect from 01.03.1992, designation for the post of Personal Assistant was changed to Private Secretary in the existing pay scale of ₹ 6500-10500 (Central Pay Scale) and ₹ 6400-10640 (Punjab Pay Scale). The date of eligibility for such re-designation was fixed as 01.03.1992 or the date of promotion as Personal Assistant having 8 years experience including that of Senior Scale Stenographer, whichever is later. Accordingly, vide order dated 26.08.2002, petitioners No.1 and 2 were re-designated as Private Secretary with effect from 25.09.1998 and 13.10.1998, respectively, after their completing 8 years of regular service including the service of Senior Scale Stenographer, whereas respondent No.1 was re-designated as Private Secretary with effect from 09.08.1997, the date of his promotion as Personal Assistant. In the said order dated 26.08.2002, it was mentioned that irrespective of the date of re-designation as Private Secretary, there will be no change in the seniority list in grade of Personal Assistant. Thereafter, on 28.05.2012, when the PGIMER circulated the provisional seniority list of

the Private Secretaries, showing the petitioners as senior to respondent No.1, latter submitted representation/objections dated 12.06.2012, followed by a reminder dated 04.10.2012, requesting the authorities to modify the said seniority list dated 28.05.2012 and by giving him the benefit of 'Catch-up Rule', his seniority be re-fixed over and above the petitioners. Vide order dated 02.09.2013, PGIMER finalised the aforesaid provisional seniority list dated 28.05.2012. Respondent No.1 submitted many representations/reminders against the said order. Subsequently, on the basis of DPC proceedings dated 27.11.2013, vide order dated 21.12.2013, the petitioners were promoted to the post of Principal Private Secretary. Aggrieved against the same, respondent No.1 filed OA No. 060/00182/2014 challenging the order dated 02.09.2013 finalising the provisional seniority list, and the aforesaid order dated 21.12.2013, ordering promotion of the petitioners. However, vide order dated 15.07.2015, respondent No.1 was permitted to withdraw the same with liberty to file fresh OA on the grounds available to him. Accordingly, respondent No.1 filed OA No. 060/00820/ 2015 challenging the seniority list dated 02.09.2013, DPC proceedings dated 27.11.2013 and the order dated 21.12.2013 regarding promotion of the petitioners.

3. The petitioners and the official respondents filed their respective written statements.

4. After hearing learned counsel for the parties, the learned Tribunal vide the impugned order dated 24.05.2016/31.05.2016 has allowed the said OA; and has quashed the seniority list dated 02.09.2013, DPC proceedings dated 27.11.2013 and the promotion order dated 21.12.2013

qua the present petitioners. The official respondents have been directed to re-draw the seniority list of Private Secretaries by applying 'Catch-up Rule' and to hold review DPC thereafter for promotion to the post of Principal Private Secretary and to grant promotion accordingly from due dates with all consequential benefits. It has also been ordered that respondent No.1 herein may also be considered accordingly for promotion and be granted promotion, if found fit for the same. Hence the present writ petition.

5. Learned counsel for the petitioners argued that since promotion of the petitioners to the post of Personal Assistant vide order dated 04.12.1993 and consequent fixation of seniority as on 30.09.2001 was not challenged by respondent No.1, therefore, the Original Application filed by respondent No.1 in the year 2015 challenging the seniority list dated 02.09.2013 was time barred. Learned Tribunal has wrongly given benefit of the 'Catch-up Rule' to respondent No.1, as this Rule would be applicable from 17.06.1995, the day when Article 16 (4A) of the Constitution of India was inserted, and the petitioners in the instant case were promoted as Personal Assistant in the year 1993.

6. On the other hand, learned counsel for respondent No.1 submitted that after re-designation of the petitioners and respondent No.1 as Private Secretaries vide order dated 26.08.2002, mentioning therein that irrespective of the date of their re-designation, there will be no change in the seniority list in grade of Personal Assistant, when the PGIMER circulated the provisional seniority list of the Private Secretaries on 28.05.2012, respondent No.1 submitted objections to the same by submitting representation dated 12.06.2012, followed by a reminder dated 04.10.2012.

However, vide order dated 02.09.2013, without considering the objections/ representations of respondent No.1, PGIMER finalised the aforesaid provisional seniority list dated 28.05.2012. Hence, within the period of limitation, in the year 2014, respondent No.1 challenged the aforesaid order dated 02.09.2013 by filing OA No. 060/00182/2014, which was dismissed as withdrawn vide order dated 15.07.2015, with liberty to respondent No.1 to file fresh OA on the grounds available to him. Accordingly, fresh OA No. 060/00820/2015 challenging the seniority list dated 02.09.2013, DPC proceedings dated 27.11.2013 and the order dated 21.12.2013 regarding promotion of the petitioners was filed, which can not be said to be barred by limitation. The said OA has been rightly allowed by the learned Tribunal, which does not require any interference.

7. After giving our thoughtful consideration to the rival contentions of learned counsel for the parties and going through the impugned order, we find merit in the submissions made by learned counsel for respondent No.1, because it is the own case of the petitioners that the 'Catch-up Rule' would be applicable from 17.06.1995, the day when Article 16 (4A) of the Constitution of India was inserted. Admittedly, the petitioners and respondent No.1 in this case were promoted as Personal Assistant after the said cut off date. Respondent No.1 was promoted with effect from 09.08.1997, whereas the petitioners were promoted as such with effect from 25.09.1998 and 13.10.1998. Hence, the learned Tribunal has rightly given the benefit of 'Catch-up Rule' to respondent No.1. Furthermore, since the official respondents did not prepare the correct seniority list by giving the benefit of 'Catch-up Rule' to respondent No.1,

and finalised the provisional seniority list dated 28.05.2012 without considering the representations submitted by respondent No.1, therefore, in our opinion, the OA filed by respondent No.1 cannot be said to be barred by limitation. The learned Tribunal has rightly appreciated the matter and we do not find any illegality or perversity in the impugned order.

8. Dismissed.

(RAMENDRA JAIN)
JUDGE

September 14, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes