

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

CWP No.16630 of 2014 (O&M)

Reserved on:14.07.2017

Date of Decision: 12.09.2017

Darshan Singh & others

--Petitioners

Versus

PSPCL & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Gurminder Singh, Sr. Advocate with
Mr. RPS Rana, Advocate for the petitioners.

Mr. Vivek Sharma, Advocate for respondents No.1 and 2.

Mr. D.S. Patwalia, Sr. Advocate with
Mr. B.S. Patwalia, Advocate for respondents No.3 and 4.

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TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against the order dated 13.03.2014 (Annexure P-9) passed by the respondent/Punjab State Power Corporation Limited, whereby private respondents No.3 and 4 have been granted deemed date promotion as Junior Scale Stenographers w.e.f. 07.07.2006.

Counsel for the parties have been heard at length and pleadings on record have been perused.

Promotion to the post of Junior Scale Stenographer is governed by Punjab State Electricity Board Service of Stenographers Class III Regulations, 1987 (hereinafter to be referred to as 'the Regulations').

Regulation 8 reads as follows:

“Appointment to the Service:-

8. *Appointment to the service shall be made in following manners:-*

- I. By direct appointment as provided in Regulation 8-A.*
- II. By promotion as provided in Regulation 8-A.*
- III. By transfer of an official already in service of any other State Electricity Board or Govt. or any other Undertaking of the Government, if a suitable candidate is not available by the aforementioned two methods.”*

A note appended to Regulation 8-A would be relevant to the controversy at hand and is reproduced below:

- I. In the cases of recruitment to all the posts in the service by direct recruitment, the candidates must have passed Punjabi up to matric or its equivalent standards.*
- II. All appointments to the service by promotion shall be made on the basis of seniority cum merit and no person shall have any right of promotion on the basis of seniority alone.”*

Clause 2 (a) of the Appendix 'A' attached to the Regulations prescribes the following method and qualifications for appointment to the post of Junior Scale Stenographers:

2(a)	Jr. Scale Stenographer (English/ Punjabi)	(i) By promotion from amongst Steno Typists	(i) Matric 2 nd Division or 10+2 (ii) After qualifying prescribed test of Jr. Scale Stenographer at a minimum speed of 100 WPM in shorthand in English/ Punjabi (as the case may be) and	Two years service as Steno Typist Grade I	(i) In the event of non-availability of suitable candidates for promotion, the vacancies shall be filled up by direct recruitment/appointment. (ii) Candidates who are 1 st Division matriculate or possess higher qualifications shall be
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			20 WPM in transcribing the same. He shall also have to qualify Stenography test in 2 nd language at a minimum speed of 50 WPM in Punjabi/English (as the case may be) and 10 WPM in transcribing the same.		preferred.
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Towards regulating promotion to the post of Junior Scale Stenographer, the respondent/Board issued instructions dated 20.09.1994, appended and placed on record at Annexure P-2 and the relevant extract of which is in the following terms:

“It is informed that on 10.02.94 the Management of the Board held a meeting with PSEB Stenographer Union and in that meeting minutes of Additional Demand No.12/1 [Regarding holding of Stenographer test every year], the Secretary/Establishment Estb./Part-I PSEB, Patiala vide letter No.7960/E.N.G./E-7/Part-14 dated 5.8.94 it has been decided that the Stenographer test would be held only on this condition, if those employees who had passed the Stenographer test earlier/would do and their promotion to the next higher post would be according to the seniority determined and the employees who have passed the test later on may be senior in the seniority list of Steno Typist. But on this basis they would not have any right to claim seniority over the persons who have already passed the test.”

CWP No.539 of 2009 came to be filed before this Court raising

a plea that the instructions dated 20.09.1994 run contrary to the Regulations governing promotion to the post of Junior Scale Stenographers. The challenge was negated by the learned Single Judge and the writ petition was dismissed vide order dated 27.09.2010 and the operative part of which reads as under:

- “9. I have heard learned counsel for the parties at some length and perused the records. In my considered view, there is no inconsistency between the Service Regulations and the impugned instructions. I say so for the reason that if more than one employee scores the minimum bench-mark and qualify for promotion to the post of Junior Scale Stenographer, their inter-se seniority as in the feeder cadre shall remain intact irrespective of their merit position. It is only if the senior employee does not qualify and can not be promoted along with his juniors but if he qualifies in the subsequent years that his seniority shall be reckoned from the year in which he actually qualifies the minimum bench-mark. On subsequent passing of the promotional test, the employee senior in feeder cadre can not claim that his original seniority be restored as such a claim, if allowed, would amount to giving premium on in-efficiency.*
- 10. No ground to interfere with the impugned instructions [Annexure P-2] is made out.*
- 11. Dismissed.”*

Matter having been carried in an Intra Court Appeal, a Division Bench of this Court partly allowed LPA No.450 of 2011 vide judgment dated 12.03.2013 and the same is extracted hereunder:

“The issue raised in the present appeal pertains to the promotion to the post of Stenographer III. This promotion is governed by Punjab State Electricity Board Service of Stenographers Class III Regulations, 1988. As per Regulation 8

of the said Regulations, the promotion to the said post is on the basis of seniority-cum-merit. However, before a person is considered for promotion, it is also incumbent for the candidate to pass prescribed Stenography Test at a minimum speed of 100 words per minute in shorthand in English/ Punjabi as the case may be and 20 words per minute in transcribe the same.

The appellants herein had filed a writ petition seeking quashing of instructions dated 20.9.1994 on the plea that these instructions were contrary to the aforesaid statutory regulations. The learned Single Judge has rejected the contention of the appellants holding that there is no inconsistency between the service regulations and the impugned instructions. This part of the judgment is accepted by the appellants. However, present appeal is filed by the appellants, as the appellants feel aggrieved by some observations which are made thereafter by the learned Single Judge while dismissing the writ petition. In order to appreciate that, we reproduce para 9 of the impugned judgment, which read as under:-

*“I have heard counsel for the parties at some length and perused the records. In my considered view, there is no inconsistency between the service Regulations and the impugned instructions. I say so for the reason that if more than one employee scores the minimum bench mark and qualify for promotion to the post of Junior Scale Stenographer, their inter se seniority as in the feeder cadre shall remain intact irrespective of their merit position. It is only if the senior employee does not qualify and can not be promoted along with his juniors but if he qualifies in the subsequent years that his seniority shall be reckoned from the year in which he actually qualifies the minimum bench mark. **On subsequent passing of the promotional test, the employee senior in feeder cadre can not claim that his***

original seniority be restored as such a claim, if allowed, would amount to giving premium on in efficiency.”

It is submitted by learned counsel for the appellants that the appellants are aggrieved only by the bold portion extracted above. It is further submitted that there cannot be any dispute in case a senior employee does not qualify the stenography test and on that basis is not promoted and junior gets promotion after qualifying the test, the junior in the promoted post will rank senior to the senior in the feeder cadre even if such senior is promoted in subsequent years. However, according to him, the observations that “on subsequent passing of the promotional test” the senior will rank junior is not correct as it is not the time of passing the test that will determine the seniority in the promotional cadre but the date on which the two are promoted. It is also submitted that such qualifying tests are held every year and not at the time when the promotion process is undertaken. Therefore, a candidate, who is junior can pass the test earlier than the senior and that would not make any difference if senior also passes the test subsequently but before the promotion takes place and both of them are promoted on the same date. In that eventuality, it is pointed out that the senior person even when he passes the qualifying test later, would rank senior as both of them are promoted on the same date.

We find substance in this submission of learned counsel for the appellants. We, thus, clarify that absence of the qualifying test will be of no consequence and would not be determinative factor and if the two persons are promoted on the same date, it is the senior in the feeder cadre, who would rank senior in the promotional cadre as well.

The appeal is allowed to the aforesaid extent, setting aside the observations which are extracted in bold hereinabove. The respondents are directed to refix the seniority in the

aforesaid manner.”

Brief factual matrix emanating from the pleadings on record may be noticed.

Private respondents No.3 and 4 joined service with the respondent/Board as Steno Typist on 03.01.1986 and 20.01.1986. Petitioners herein joined as Steno Typist in the year 1995 onwards. Admittedly, in the feeder cadre of Steno Typist, private respondents were senior to the petitioners. The petitioners are stated to have cleared the qualifying test envisaged under Regulation 8 to be eligible for promotion to the post of Junior Scale Stenographer from the year 1996 onwards. Petitioners were promoted as Junior Scale Stenographers from the year 2003 onwards. Respondents No.3 and 4 cleared the qualifying test so as to become eligible for promotion to the post of Junior Scale Stenographers in April, 2006 and April 2005 respectively. Respondents No.3 and 4 were promoted to the post of Junior Scale Stenographers on 06.02.2014. Vide impugned order, respondents No.3 and 4 have been given deemed date of promotion as Junior Scale Stenographers w.e.f. 07.07.2006 i.e. the date their junior in the feeder cadre of Steno Typist, Karamjit Singh had been so promoted.

The crucial issue that arises for consideration before this Court is as to whether respondents No.3 and 4 in spite of having cleared the qualifying test could have been denied promotion to the post of Junior Scale Stenographers w.e.f. the date their junior had been so promoted only on the basis that such junior had cleared the qualifying test envisaged under Rule 8 of the Regulations prior in point of time?

Under the statutory Regulations and as per Regulation 8, appointment to the service by promotion is provided in Regulation 8-A. As

per note appended to Regulation 8-A, appointment to the service by promotion shall be made on the basis of seniority-cum-merit. Under Clause 2(a) of the Appendix attached to the Regulations, promotion to the post of Junior Scale Stenographer is from amongst Steno Typists, who possess the qualification of Matric 2nd Division or 10+2 and also have experience of 2 years service as Steno Typist. Under the Regulations, prior to being considered for promotion, it is also incumbent for such Steno Typist to pass the prescribed stenography test at a minimum speed of 100 W.P.M. in shorthand in English/Punjabi as the case may be and 20 W.P.M. in transcribing the same.

As per the scheme and mandate of the statutory Regulations, the stenography test would be seen as a qualifying test and a prerequisite towards eligibility to be considered for promotion to the post of Junior Scale Stenographer. Be that as it may, appointments to the service by promotion including the post of Junior Scale Stenographer would be on the basis of seniority-cum-merit. In other words, a Steno Typist would have to qualify the Stenography test i.e. the qualifying test and promotion to the post of Junior Scale Stenographer would otherwise be on the basis of seniority-cum-merit and such seniority to be reckoned in the feeder cadre i.e. in the cadre of Steno Typist. Under the Scheme of the Regulations, qualifying the stenography test would not be determinative of the date of promotion to the post of Junior Scale Stenographer but would be seen as an essential prerequisite. Subject to qualifying the stenography test, it is the principle of seniority-cum-merit in the feeder cadre that is to apply for promotion as Junior Scale Stenographer.

It is the pleaded case of the petitioners themselves in para 9 of the petition that the petitioners were promoted to the post of Junior Scale Stenographers in the order of 'batch wise seniority' and such batches being determined as per date of clearing the qualifying test of stenography. Even in the written statement filed by the Deputy Secretary, Establishment-I, Punjab State Power Corporation Limited, Patiala on behalf of respondents No.1 and 2, it has been averred that Stenographers were being promoted on the post of Junior Scale Stenographer by making an year wise seniority of employees who had cleared the qualifying stenography test.

In the considered view of this Court, such methodology adopted by the respondents of promoting juniors in the cadre of Steno Typist to the post of Junior Scale Stenographers only by virtue of clearing the qualifying test prior in point of time was alien to the mandate of the statutory regulations which envisaged appointment to the service by promotion on the post of seniority-cum-merit.

Much emphasis has been placed by the petitioners on the instructions dated 20.09.1994 (Annexure P-2) issued by the respondent/ department. It was contended that as per instructions dated 20.09.1994, the qualifying test for further promotion was to be held every year and promotions were to be made as per date of passing of the said test and the employees who cleared the test first, were vested with a right to be promoted earlier in point of time upon availability of post.

Even such contention and submission advanced on behalf of the petitioners is without merit.

The extent of operation of the instructions dated 20.09.1994 had

come up for examination before the learned Single Judge in CWP No.539 of 2009 and while taking a view that the instructions dated 20.09.1994 are not inconsistent with the statutory Regulations governing promotion from the post of Steno Typist to that of Junior Scale Stenographer, it had been observed that even if more than one employee score the minimum benchmark and qualify for promotion to the post of Junior Scale Stenographers, their inter se seniority as in the feeder cadre shall remain intact. It was further observed that it is only if the senior employee does not qualify and cannot be promoted along with his juniors but if he qualifies in the subsequent years that his seniority shall be reckoned from the year in which he actually qualifies the minimum benchmark.

In the order dated 27.09.2010 passed by the learned Single Judge dismissing CWP No.531 of 2009, a further observation had also been made to the effect that “on subsequent passing of the promotional test, the employee senior in feeder cadre cannot claim that his original seniority had restored and such a claim, if allowed, would amount to giving premium on inefficiency.”

In LPA No.450 of 2011 decided on 12.03.2013, the afore highlighted observations were clarified to the extent that absence of the qualifying test will be of no consequence and would not be a determinative factor and if two persons are promoted on the same date, it is the senior in the feeder cadre, who would rank senior in the promotional cadre as well. It was in the light of such observations that the respondents were directed to refix the seniority.

A conjoint reading of the judgment dated 27.09.2010 passed by

the learned Single Judge in CWP No.539 of 2009 as also the judgment dated 12.03.2013 passed by the Division Bench in LPA No.450 of 2011 would shown that upon consideration of the instructions dated 20.09.1994, it was laid down that if on the date of promotion, a senior has cleared the qualifying promotional examination, a junior cannot be promoted ahead of him only on the basis that the junior had qualified such examination prior in time to the senior.

The conceded position of fact is that the private respondents herein had cleared the qualifying promotional test in April, 2006 and April, 2005 respectively. Karamjit Singh was their junior in the cadre of Steno Typist. Karamjit Singh was promoted as Junior Scale Stenographer on 07.07.2006 i.e. the date, private respondents No.3 and 4 had also cleared the promotional qualifying test. As per scheme and mandate of the statutory regulations, private respondents No.3 and 4 could not have been denied promotion to the post of Junior Scale Stenographer w.e.f. 07.07.2006 only on the ground that their junior, Karamjit Singh had cleared the qualifying promotional test prior in point of time.

There is no infirmity, as such, in the impugned order dated 13.03.2014 (Annexure P-9) granting the petitioners the benefit of deemed date of promotion as Junior Scale Stenographer w.e.f. 07.07.2006. The impugned order dated 13.03.2014 (Annexure P-9) is not only in conformity with the statutory regulations but is also in keeping with the dictum laid down by this Court in CWP No.539 of 2009 decided on 27.09.2010 and further clarified in judgment dated 12.03.2013 in LPA No.531 of 2011.

To put matters in perspective, it is clarified that such of the

petitioners who were promoted as Junior Scale Stenographer on a date prior to the private respondents clearing the qualifying promotional test envisaged under the Regulations, shall rank senior in the promotional cadre of Junior Scale Stenographer in spite of passing of the order dated 13.03.2014 (Annexure P-9).

In view of the reasons assigned above and subject to the clarification, there is no merit in the writ petition and the same is dismissed.

12.09.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

i) Whether speaking/reasoned? Yes

ii) Whether reportable? Yes