

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.2639 of 2015

Date of Decision: 21.12.2017

Satish Kumar

...Petitioner

Vs.

The Chief Secretary to Government of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sanjay Bansal, Sr. Advocate with
Mr. Amit Parsad, and
Mr. Parveen Kumar Saini, Advocates,
for the petitioners.

Mr. R. K. Doon, AAG, Haryana.

Mr. Madan Pal, Advocate,
for respondents No.5 and 6.

Amol Rattan Singh, J.

To first state the basic issue in question in this petition, the order dated 19.09.2017, is reproduced:-

“In this petition, the petitioner seeks seniority over respondent No.5, Mahesh Kumar, on the ground that though they were promoted on the same date as Private Secretaries, vide the order Annexure P-3, on 28.12.2011, (the petitioner having been given proforma promotion, he being on deputation with the Haryana Raj Bhawan), yet he would have to be ranked senior to the aforesaid respondent, as in the feeder cadre, the petitioner being a Personal Assistant was drawing the pay scale of Rs.9300-34800 and grade pay of Rs.5400/-, whereas respondent No.5, being in a different feeder cadre of a Reporter, was in the pay scale of Rs.9300-34800 with a grade pay of Rs.4800/-.

Thus, they having been promoted on the same date, the contention is that the person in the higher scale, in whatever feeder cadre, would necessarily have to be treated as senior in the promoted cadre, which the respondents are denying on the

ground that a person from the cadre of Personal Assistants already having been promoted prior in time as a Private Secretary, the next promotional post was to go to the cadre of Reporters, with respondent No.5 being such a Reporter. Therefore he would be ranked senior to the petitioner.

Admittedly, the Haryana Vidhan Sabha Secretariat Service Rules, 1981, were 'in force' on the date of promotion, in which both, Personal Assistants and Reporters are shown to be the feeder cadre for the post of Private Secretary. However, again admittedly, at least in the rules notified, there was no quota fixed as to from which of the 2 feeder cadres promotion was to be made.

The respondents, in support of the aforesaid contention of their being a quota fixed between the two feeder cadres, rely upon a communication from the Secretary, Haryana Vidhan Sabha, dated 08.12.2010, addressed to the Chief Secretary to the Government of Haryana, a copy of which is annexed as R-2 with the reply, by which a 50:50 ratio has been proposed to be fixed in the rules, between the two feeder cadres.

Thus, the aforesaid being only a proposal, with no such notification having been issued thereafter, actually amending the rules to fix a ratio, that contention is rejected.

However, learned counsel appearing for respondents no.5 and 6 relies upon a judgment of the Supreme Court in Bihar State Subordinate Industries Field Officers' Association vs. Kapildeo Prasad Singh 2000(3) SCT 251, to submit that placing in different pay scales would not affect seniority in the promoted cadre, and it would actually be the length of continuous service in the feeder cadre which would determine such seniority in the promoted cadre.

Learned Senior Advocate appearing for the petitioner, however, relies upon various other judgments of the Supreme Court and this Court, to submit to the contrary. He also points to Rule 11 of the aforesaid rules of 1981, to submit that seniority is to be fixed as per the said rules.”

Other than what has been noticed in the aforesaid order, the respondent State in its reply has further also stated that the petitioner was working as a Private Secretary in the Secretariat of the hon'ble Governor of Haryana (at the Haryana Raj Bhawan), for which post he was selected from the Haryana Vidhan Sabha Secretariat on 10.12.2010, (where he was working as a Personal Assistant since 26.03.1999).

Thereafter, upon Civil Writ Petition No.13867 of 2009 having been filed by some employees of the Haryana Vidhan Sabha Secretariat, the said writ petition was disposed of on 08.09.2010 by this Court, with a direction that as regards the grievance of the petitioners therein, for fixing a quota in promotion from amongst the feeder cadres, they would file a representation before the hon'ble Speaker of the Vidhan Sabha, who, if he considered it appropriate, may decide it within 6 months. Liberty was also given to the petitioners in that petition to take any appropriate action in accordance with law, upon the order that would be passed on their representation.

2. The written statement on behalf of the respondents no.1 to 3 (in the present petition), further goes on to state that two posts of Private Secretaries in the Vidhan Sabha Secretariat were available for promotion in the month of December 2011, with one Hardev Singh having retired from the said post on 31.08.2011 and Purushottam Dutt having been promoted as an Under Secretary in December 2011 itself.

Thus, following the decision of the hon'ble Speaker, pursuant to the directions issued in CWP no.13867 of 2009, the senior most Personal Assistant, Smt. Saroj Kumari, was promoted as a Private Secretary on 28.12.2011, and the senior most English Reporter, Shri Mahesh Kumar

Sharma (respondent no.5), was also promoted vide the same order, against the other vacant post. Hence, both the posts of Private Secretaries then vacant were filled up in the ratio of 50:50 in terms of the decision taken by the Speaker, with no incumbent on the post of Personal Assistant, including the petitioner, having raised any objection thereto, at that stage.

However, the petitioner was also promoted as an officiating Private Secretary vide the same order, by way of a proforma promotion, “due to the pressure of the petitioner and his posting in the Haryana Raj Bhawan and the then hon'ble Speaker directed orally to give him proforma promotion.”

As per the official respondents, actually no proforma promotion was required to be given to the petitioner as no person junior to him had been promoted, with one person “in his category” (cadre of Personal Assistants), Smt. Saroj Kumari, having been promoted.

It is also stated that a proforma promotion is always given to protect the seniority of a senior person out on deputation, but with the petitioner being junior to the aforesaid Saroj Kumari, such proforma promotion was actually not required to be given to him.

3. Learned counsel for the parties addressed arguments in terms of their pleadings.

It needs to be noticed here that though one Shri Rajinder Singh Chauhan was also promoted as an officiating Chief Reporter vide the same order dated 28.12.2011, arguments by learned counsel were however addressed essentially on the issue of seniority between the petitioner and respondent no.5. For the record, however, it also needs to be noticed that respondent no.6 is shown to be at Sr. no.5 in the said promotion order, i.e. he was shown below the petitioner as also respondent no.5.

4. Having considered the pleadings as also the arguments raised by learned counsel on both sides, in the opinion of this Court, this petition deserves to be allowed.

To give the reasoning for that conclusion, it first needs to be said that the competent authority, i.e. the hon'ble Speaker, Haryana Vidhan Sabha, very obviously ordered the promotion of the petitioner also alongwith the aforesaid Saroj Kumari and respondent no.5 herein, Mahesh Kumar Sharma, vide the same order dated 28.12.2011 (Annexure P-3), with the petitioner shown at Sr. no.3 of the order, i.e. between Saroj Kumari and Mahesh Kumar Sharma, with Saroj Kumari admittedly being his senior and Mahesh Kumar Sharma shown to be immediately below the petitioner. Thus, even at that stage, the petitioners' promotion was made in view of the fact that he was considered senior to respondent no.5 (Mahesh Kumar Sharma) and therefore, while being promoted alongwith him, even by way of a proforma promotion, he was shown above him in the order of promotion.

5. Coming to the relevant rule determining seniority in the cadre of the petitioner and respondent no.5, Rule 11 of the Haryana Vidhan Sabha Secretariat Service Rules, 1981, reads as follows:-

“11. Seniority, inter se of members of the Service shall be determined by Seniority the length of continuous service on any post in the service:

Provided that where there are different cadres in service the seniority shall be determined separately for each cadre:

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the recruiting authority shall not be disturbed in fixing the seniority:

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows :-

- (a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;
- (b) a member appointed by promotion shall be senior to a member appointed by transfer;
- (c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the appointments from which they were promoted or transferred; and
- (d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member, who was drawing a higher rate of pay in his previous appointment; and if the rates of pay drawn are also the same, then by the length of their service in the appointment and if the length of such service is also the same, the older member shall be senior to the younger member.”

6. Thus, as per clause (c) of the 3rd proviso to the said rule, in case of members appointed by promotion, seniority would be determined according to the appointments from which they were promoted.

The aforesaid phrase (“according to the appointments -----”), could be interpreted in two ways; either that it is as per the length of service in the lower cadre, or by determining as to which appointment can be considered a higher appointment in the lower cadre.

Undoubtedly, if it is to be the length of service in the lower cadre, then respondent no.5 would be deemed to be senior, he having joined as a Reporter in the Vidhan Sabha on 15.11.1991, with the petitioner having been appointed as a Personal Assistant on 26.03.1999.

However, if the wording is to be seen as it is, it would have to be interpreted, in my opinion, as per the nature of appointment on the lower post, i.e. as to which was to be considered a 'higher appointment' and which a lower

one, because if it was not to be so, then nothing prevented the rule making authority from simply stating that seniority on the higher post in case of members appointed by promotion (or by transfer), on the same date, would be by the length of continuous service on the lower post.

That not being so and in clause (d) following, it being stated specifically that as regards appointment made by by way of transfer from different cadres, seniority would be determined according to pay, with the member of service drawing a higher pay in the previous appointment ranking senior to the person drawing a lower pay in his previous post, there would be no manner of doubt that actually the rule stipulates seniority in the higher post to be determined as per the pay drawn in the lower post, if two persons from different cadres were both promoted to a higher post on the same date.

7. Thus, even if a decision was taken to fix a ratio between the two feeder cadres for promotion to the post of a Private Secretary, but that decision not having fructified into a notification amending the rule, it would not be the proposed decision, but the existing rule that would prevail, unless the promotion itself was deferred till the proposal actually fructified into an actual amendment in the rules.

The petitioner having been promoted on 28.12.2011, alongwith respondents no.5 and 6 and Saroj Kumari, as a Private Secretary, specifically being shown above respondent no.5 (Mahesh Kumar Sharma) in the promotion order, but below Saroj Kumari, that was obviously for the reason that he was admittedly junior to her, but was drawing a higher pay in the lower post (as a Personal Assistant), than respondent no.5 was drawing as a Reporter.

8. As regards the judgment cited by learned counsel for respondents no.5 and 6, i.e. in **Bihar State Subordinate Industries Field Officers' Association v. Kapildeo Prasad Singh and others** (2000) 6 SCC 507, it is seen that in that case what had been challenged before the Patna High Court was the clubbing of different cadres, as feeder cadres for promotion to the Bihar Industries Service. The rule concerned in the Bihar Industries Service Cadre Rules, 1987, stipulated that promotions would be made from amongst officers holding posts “just below”, with the promotion to the initial rung of the cadre normally to be made from amongst officers listed in Schedule IV appended to the rules, on a seniority-cum-merit basis.

The officers holding posts in different cadres of Groups A, B and C having all been included in Schedule IV, some with a higher grade of pay than others, such clubbing itself came under challenge.

However, the rule in that case also envisaged a fixed quota for promotion to the higher cadre, inter-se Groups A, B and C in Schedule IV, and in such a situation it was held by the Supreme Court that the clubbing itself in Schedule IV, of officers from Groups A, B and C, for the feeder cadre for the higher post, could not be found fault with.

While doing so, an earlier judgment in **Union of India v. N. Y. Apte** (1998) 6 SCC 741 was also referred to by their Lordships, in which again, clubbing of M.G.-II cadre officers with Assistant Managers, for further promotion to the M.G.-I cadre had been challenged. However, that challenge had also been repelled, holding that if the rule making authority thought it fit to equate two cadres for the purpose of promotion to a higher cadre, nothing wrong could be found in that action.

9. Hence, in the opinion of this Court, the situations in those cases

and the present one are wholly different, with there being no challenge by either side to the fact that two cadres of posts (Reporters and Personal Assistants) have been clubbed together as feeder cadre posts for promotion as Private Secretaries, (the rules in any case being of the year 1981), and the challenge in fact only being to the effect that the petitioner cannot be considered junior to respondents no.5 and 6 (essentially actually to respondent no.5 only at the time of promotion to the post of Private Secretary).

For the reason that the relevant rule stipulates as has been noticed hereinabove, and further, with the petitioner having been shown above respondent no.5 in the promotion order dated 28.12.2011, obviously he was considered senior by a conscious decision taken by the competent authority (in consonance with the statutory rule), he being on a higher pay scale in the feeder cadre post, than respondent no.5.

10. On the issue of a person drawing a higher scale in the lower cadre being senior to a person drawing a lower scale, upon both of them being promoted on the same date to a higher post, a judgment of a Division Bench of this court in **Union of India v. Mohan Singh** 1999 (2) SCT 553 can be cited, as also that of a co-ordinate Bench in **Jagdish Chand Aggarwala v. The Haryana State Federation of Consumers Corporation Wholesale Stores Limited** 2001 (2) SCT 1036.

A judgment of another Division Bench in **Ram Kishan Kashyap and others v. Guru Jambheshwar University of Science & Technology and others** 2007 (4) SCT 340 can also be cited on that basic principle.

11. Consequently, this petition is allowed to the extent that the petitioner shall be treated to have been promoted against the post vacated by Shri Hardev Singh on his retirement, instead of respondent no.5, with the said

respondent to be adjusted as a Private Secretary against the post on which the petitioner was adjusted with effect from the same date, and if there be no such post available on that date, then on the next post that became available (in the rank of a Private Secretary) thereafter.

The order dated 18.04.2014 (Annexure P-13) is quashed to the extent that it would be the petitioner and not respondent no.5 who would be deemed to have been confirmed on the post of a Private Secretary (in place of respondent no.5), though below Smt. Saroj Kumari, who has wrongly been shown below respondent no.5 in the said order.

Any consequential relief flowing to the petitioner on account of the aforesaid reshuffling of seniorities as directed hereinabove, would be granted to him within a period of 3 months from the date of receipt of a certified copy of this order.

No order as to costs.

December 21, 2017

dinesh

**(AMOL RATTAN SINGH)
JUDGE**

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No