

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

Civil Writ Petition No.3412 of 2017

Date of Decision: August 10, 2017

Mool Raj

...Petitioner

Versus

Central Administrative Tribunal, Chandigarh & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.Vineet Chaudhary, Advocate,
for the petitioner.

AMIT RAWAL, J.

1. Petitioner Mool Raj, having failed in assailing the impugned order dated 13.9.2014 (Annexure P-1) challenged in O.A.No.060/00156/2015, has approached this Court through the instant writ petition under Articles 226/227 of the Constitution of India.

2. Mr.Vineet Chaudhary, learned counsel representing the petitioner submitted that on 17.6.1993, the petitioner joined as Steno Typist in the Government Medical College and Hospital, Sector 32, Chandigarh. The Chandigarh Administration, Department of Personnel, Chandigarh issued the Model Recruitment Rules on 7.4.1998 (for short "1998 Rules") for filling up the post of Senior Assistant in the pay scale of ₹5800-9200. Rule 12 of 1998 Rules provided that the feeder cadre for the purpose of promotion from amongst the Clerks/ Senior Clerks, Junior Assistants, Steno-typist Grade-II, Steno-typist Grade-I having five years regular service in the cadre taken together as Clerk, Senior Clerk, Junior Assistant, Steno

typist Grade-I, Junior Scale Stenographer Grade-II and Junior Scale Stenographer Grade-I.

3. It was also argued that in the year 1998, three vacancies of Senior Assistant became available from the feeder cadre. On 31.7.1998, Departmental Promotion Committee (for short “DPC”) was convened, in which the name of the petitioner was considered at Sr.No.3 and that of private respondent at Sr.No.4. Names of two candidates, who were above the petitioner, were approved and the case of the petitioner was deferred. In the subsequent DPC held on 8.12.1998, the name of the petitioner was again kept pending. However, during the interregnum, the petitioner requested for promotion to the post of Senior Assistant. However, the respondents were denying consideration of the case of the petitioner on the plea of new Draft Recruitment Rules dated 6.6.2002, whereby Steno-typist and Junior Scale Stenographer were excluded from the eligibility cadres for promotion to the post of Senior Assistant. The claim of the petitioner was rejected vide order dated 25.7.2007. The petitioner assailed order dated 25.7.2007 before the CAT by filing OA No.481/CH/2007. Even challenge was also laid to the Recruitment Rules, namely, Government Medical College, Chandigarh (Schedule-1), Draft Recruitment Rules, as published in the Chandigarh Administration Gazette dated 1.7.2002 (for short “2002 Rules”).

4. It was next contended that vide order dated 14.9.2009, the CAT declined to interfere qua the challenge to the rules, but directed the respondents to consider the case of the petitioner for promotion in accordance with the old rules. The official respondents kept the matter pending compelling the petitioner to file Contempt Petition No.72 of 2013.

However, during the pendency of the aforementioned contempt petition, the

respondents passed order dated 13.9.2014, Annexure A-1 (Annexure P-1 in the present writ petition). It was claimed that the said order was not sustainable on the ground that the Nodal Ministry in the Chandigarh Administration is the Department of Personnel, which has control over various departments/offices under it, including the respondent-college. The said Nodal Department, vide letter dated 7.4.1998 framed the Model Recruitment Rules for various posts in the subordinate offices of Chandigarh Administration, including the post of Senior Assistant for which the posts of Steno Typist and Junior Scale Stenographer were a feeder cadre for promotion. Since the vacancy of the Assistant was available on 31.7.1998 when the DPC was held, the same would be governed by the Model Recruitment Rules of 1998 and not 2002 Rules.

5. Learned counsel further argued that the petitioner was eligible in terms of the Model Recruitment Rules framed by respondent No.2 upto 2002 Rules. While framing the Recruitment Rules, the rights of existing employees could not be taken away or disturbed, as the amendment in the rules has to be applied prospectively and not retrospectively. The CAT has failed to appreciate that in the present case, it was relating to placement of Steno Typist in the higher cadre in the ratio of 50:50. It was not a case of promotion. Moreover, the placement and promotion are two different things. The petitioner was eligible to be promoted as Senior Assistant on the basis of 1998 Rules, which provided feeder category as Clerks, Steno Typist and Junior Scale Stenographer. In other words, when the DPC was held on 31.7.1998, 1998 Rules were applicable. Once the DPC had deferred the case of the petitioner, there was no occasion for the respondents to come out with the plea of bifurcation of the cadre and rely upon 2002 Rules. It was

also urged that the rules and the instructions dated 7.12.1998 and 8.12.1998, on the basis of which claim of the petitioner is sought to be denied, would not have any retrospective effect to the DPC held on 31.7.1998 as the post existed on the said date. As such the action was arbitrary and discriminatory. The Central Administrative Tribunal, Chandigarh Bench (for short “CAT”) has ignored the fact that the petitioner belongs to reserved category, who enjoys the safeguard under Article 335 read with Articles 14 and 16 of the Constitution of India. The CAT has erred in bypassing its own order passed earlier, wherein it was directed that the vacancies existing at the time of DPC were to be filled up in accordance with old rules.

6. We have heard learned counsel for the petitioner and appraised the paper book.

7. Before we advert to the submissions of Mr.Vineet Chaudhary, it would be apt to give short preface of the stand of the respondents taken before the CAT.

8. As per the averments in the written statement filed before CAT, it had been stated therein that the petitioner did not appear for the stenography test fixed on 30.7.1998, therefore, he could not be considered for promotion to the post of Junior Scale Stenographer as he had expressed his unwillingness and instead had insisted upon promotion as Senior Assistant on the basis of 1998 Rules. There were three posts available, against which two Senior Clerks in the direct line of promotion as per seniority, were promoted as Senior Assistant as per DPC held on 31.7.1998. However, one post was kept vacant. The DPC considered the case of the petitioner for promotion to the post of Senior Assistant later on as the

Original Application preferred by him seeking promotion to the post of Junior Scale Stenographer was pending adjudication. The petitioner, vide letter dated 5.8.1998, submitted an undertaking that he would withdraw the pending case before the CAT in case he was promoted as Senior Assistant and subsequently filed a Misc.Application for withdrawal of OA No.520-CH of 1997 seeking promotion to the post of Junior Scale Stenographer. Resultantly, the aforementioned Original Application was withdrawn vide order dated 24.8.1998. In the meantime, vide letter dated 18.9.1998, fresh instructions were issued by the Finance Department, Chandigarh Administration, whereby the cadre of Clerks was bifurcated into 50:50, i.e., Clerks and Junior Assistants. Accordingly, the petitioner became eligible for promotion as Junior Assistant in the pay scale of ₹5000-8100. The Department had sent the case to the Finance Department for approval of conversion of the post of Clerks into Junior Assistant. But during the interregnum, the Department of Personnel, Chandigarh Administration vide letter dated 7.12.1998 circulated the Model Recruitment Rules, according to which the Clerk/Steno-typist could no longer be considered for promotion to the post of Senior Assistant as only Junior Assistant with five years regular service in the cadre was to be treated eligible for the promotion to the post of Senior Assistant. In the aforementioned letter, it was also indicated that the steps should be taken to amend the existing Recruitment Rules enabling the Department to fill up the post of Junior Assistant and Senior Assistant in the cadre by promotion. It was submitted that owing to the bifurcation of the cadre, the case of the petitioner could not be considered for promotion as Senior Assistant.

9. However, vide order dated 22.10.1999, the petitioner was

promoted in his own line of progression, i.e., Junior Scale Stenographer. The aforementioned promotion was on the recommendation of the DPC held on 20.10.1999. In pursuance to the aforementioned order, the petitioner also submitted his joining report without any demur, condition or protest and had not protested for granting him promotion as Senior Assistant upto January, 2002.

10. On appreciating the submissions of Mr.Vineet Chaudhary as culled out in the present writ petition, Original Application and stand in the written statement, we are of the view that the findings rendered by the CAT do not call for any interference as the same do not suffer from any illegality or perversity. Firstly, the petitioner is estopped to claim the promotion once in the year 1999, he accepted the promotion as Junior Scale Stenographer without any condition. Further, after a lapse of eight years, in 2007 the petitioner filed O.A.No.481/CH/2007, which was disposed of vide order dated 14.9.2009 directing the respondents to consider his case under the old rules. The Department, vide order dated 13.9.2014 (Annexure P-1 in the present writ petition and Annexure A-1 in the Original Application) by noticing all the contentions raised by the petitioner, rejected his case on the premise that the percentage of promotional avenue in the Stenotypist Cadre from the post of Steno-typist/Junior Scale Stenographer to the post of Senior Scale Stenographer was 37%, i.e., 10 posts of Senior Scale Stenographer from amongst 27 posts of Steno-typist/Junior Scale Stenographer, whereas in the Clerk Cadre, the percentage of promotion avenue from the post of Clerk/Junior Assistant to the post of Senior Assistant equal to the similar rank was 33% (37 posts of Senior Assistant from amongst 112 posts of Clerks/Junior Assistant). For all intents and purposes, Steno-typist cadre has

been provided better promotion avenues as compared to Clerks in their own line of promotion. The order dated 13.9.2014 was under challenge before the CAT as noticed earlier.

11. The CAT upheld the order dated 13.9.2014 (Annexure P-1) with the following observations:-

“13. We have given our careful consideration to the matter. The material on record has been perused and arguments advanced by learned counsel noticed. From the impugned order as well as the written statement filed on behalf of the respondents, it is clear that the applicant was not senior to Sh.Hukam Chand, respondent No.5. If at all, a Steno-typist had to be considered for promotion as Senior Assistant, it has to be Sh.Hukam Chand who was senior to the applicant as per the seniority list of steno-typists circulated by the respondents on 10.09.2001 which list has also not been impugned by the applicant. Moreover, the applicant could have impugned his non-promotion as Senior Assistant from the cadre of Steno-typist any time after 24.08.1998 when OA No.520/CH/1997 was dismissed as withdrawn. He himself accepted the promotion as Junior Scale Stenographer in 1999 without demur and has filed the OA No.481/CH/2007 belatedly in 2007. Since it was directed vide order dated 14.09.2009 disposing of this OA that his case be considered as per the old rules, his claim for promotion as Senior Assistant got a fresh lease of life. The DPC that met in July, 1998 for considering promotion to the post of Senior Assistants, deferred the case of the applicant who was at that time a Steno-typist. While there is the right of an eligible employee to be considered for promotion, but there cannot be a right to promotion and since there was no recommendation of the DPC in favour of the applicant during the period that the model RRs remained in force whereby Steno-typists were also being considered for promotion as Senior Assistants, the applicant cannot have any

vested right to such promotion. Besides, the Model RRs are stated to be Draft Rules which were never adopted by the GMCH or the Chandigarh Administration. The Finance Department of Chandigarh Administration issued instructions on 18.09.1998 bifurcating the cadre of clerks into clerks and Junior Assistants. Fresh Model RRs were also circulated. Thereafter, only Junior Assistants were eligible for promotion as Senior Assistants. Even in Punjab, there was never a channel for promotion of Steno-typists as Senior Assistants.”

12. Learned counsel for the petitioner was unable to demonstrate that the impugned order dated 13.9.2014 passed by the respondents suffered from any legal infirmity. As an upshot of our findings, we find that the order of the CAT does not warrant any interference requiring us to form a different opinion. Resultantly, while upholding the order under challenge, writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**August 10, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No