

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 24.07.2017

+ **W.P.(C) 6232/2017, C.M. APPL.25861/2017 & 25862/2017**

ANIL YADAV AND ORS.

..... Petitioners

Through: Ms. Jyoti Singh, Sr. Advocate with Sh.
(Appearance not given)

Versus

**DELHI HIGH COURT THR. THE HON'BLE REGISTRAR
GENERAL**

..... Respondent

Through : Ms. Sonia Sharma, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioners claim direction to entitle them to participate in the upcoming examination for the post of Administrative Officer (Judicial)/Court Master [hereafter "AOJ/CM"], scheduled for 12th and 13th August, 2017.

2. The facts are that the petitioners were appointed as Junior Judicial Assistants (JJAs) on various dates in 2007-08. Four of them were promoted as Judicial Assistants (JAs) on 01.06.2012 and the rest eleven of them were promoted on 16.09.2013. They were further promoted to the post of Senior Judicial Assistants on 24.02.2014. It is submitted that the promotions made to the post of JAs and SJAs were on regular basis, in that they were preceded

by a notification of vacancies, selection through the normal process of test/interview or seniority, as the case may be, as mandated by the rules.

3. The High Court establishment, nevertheless, termed the posting/promotion as “*ad hoc*”. Therefore, the petitioners seek a direction that the expression should not come in the way of their entitlement for claiming eligibility towards qualifying services.

4. The bone of contention in this case is with respect to the petitioners’ eligibility to compete for the post of AOJ/CM. The rules for the post stipulate the eligibility conditions in the following manner:

<u>Sl No.</u>	<u>Category of Post</u>	<u>Minimum Qualifications prescribed for appointment to the post</u>	<u>Mode of appointment</u>
<u>1</u> 4.	<u>2</u> Administrative Officer (Judicial) (Promotion/Selection Post)	<u>3</u> (A) Graduate with 5 years regular service (Law graduate to be preferred) in any of the posts of Senior Judicial Assistant/Senior Judicial Translator/Reader/Court Officer. (B) (i) <u>For members of establishment of this Court:</u> Graduate with 5 years’ regular service (Law Graduate to be preferred) or non-graduate with 8 years’ service in any of the post of Assistant Accounts Officer/Senior Judicial Assistant/Senior Judicial Translator/Reader/Senior Personal Assistant/Senior Librarian/Court Officers and/or its equivalent post; OR Graduate with 7 years’ regular service (Law Graduate to be preferred) in the post of Judicial Assistant/Judicial Translator/Personal	<u>4</u> (A) 25% of the vacant posts by promotion on the basis of seniority-cum-merit from joint seniority list of categories Senior Judicial Assistant/Senior Judicial Translator/Reader and Court Officer. (B)(i) & (ii) 75% of the vacant posts by selection or merit on the basis of written test and interview from categories specified in column 3(B)(i) & (ii)

Assistant/Assistant Librarian/Chief Cashier or its equivalent post or combined service is any of these posts and the posts mentioned in clause (B)(i) above;

(B)(ii) For members of the establishment of Courts subordinate to this Court: Graduate with 5 years' regular service (Law Graduate to be preferred) in the post of Senior Judicial Assistant/Senior Personal Assistant.;

OR

Graduate with 7 years' regular service (Law Graduate to be preferred) in the post of Judicial Assistant/Personal Assistant or combined service in any of these posts and the posts mentioned in clause (B)(ii) above;

(B)(iii) For direct recruits: Graduate with 5 years' regular service (Law Graduate to be preferred) having grade Pay of Rs. 4800/- and or above.

(B)(iii) in case requisite number of candidates do not qualify for selection on merit in terms of provisions of clause (B)(i) & (ii) above, by direct recruitment on the basis of written test and interview.

5. Court Master
(Promotion/Selection Post)

(A) Graduate with 5 years regular service (Law graduate to be preferred) in any of the posts of Senior Judicial Assistant/Senior Judicial Translator/Reader/Court Officer.

(A) 25% of the vacant posts by promotion on the basis of seniority-cum-merit from joint seniority list of categories Senior Judicial Assistant/Senior Judicial Translator/Reader and Court Officer.

(B)(i) For members of establishment of this Court: Graduate with 5 years' regular service (Law Graduate to be preferred) or non-graduate with 8 years' service in any of the post of Assistant Accounts Officer/Senior Judicial Assistant/Senior Judicial Translator/Reader/Senior Personal Assistant/Senior Assistant Librarian/Court Officers and/or its equivalent post;

(B)(i) & (ii) 75% of the vacant posts by selection or merit on the basis of written test and interview from categories specified in column 3(B)(i) & (ii)

OR

Graduate with 7 years' regular service (Law Graduate to be preferred) in the post of Judicial Assistant/Judicial Translator/Personal Assistant/Assistant Librarian/Chief Cashier or its equivalent post or combined service is any of these posts and the posts mentioned in clause (B)(i) above;

(B)(ii) For members of the establishment of Courts subordinate to this Court: Graduate with 5 years' regular service (Law Graduate to be preferred) in the post of Senior Judicial Assistant/Senior Personal Assistant.;

OR

Graduate with 7 years' regular service (Law Graduate to be preferred) in the post of Judicial Assistant/Personal Assistant or combined service in any of these posts and the posts mentioned in clause (B)(ii) above;

(B)(iii) For direct recruits: Graduate with 5 years' regular service (Law Graduate to be preferred) having grade Pay of Rs. 4800/- and or above.

(B)(iii) in case requisite number of candidates do not qualify for selection on merit in terms of provisions of clause (B)(i) & (ii) above, by direct recruitment on the basis of written test and interview.

5. The petitioner's grievance is that some of their juniors (who are mentioned in the petition (Ms. Poonam Mehta, Sh. Kuldeep Thakur, Sh. Purnesh Rawat, Sh. Mukesh, Sh. Pradeep Singh Rawat, Sh. Jitender Singh Sajwan and Sh. Harish Kumar) are junior to them in the present cadre of SJAs and that consequently they should be permitted to compete for the examination.

6. Ms. Jyoti Singh, learned senior counsel argues firstly that the petitioners should be given the benefit of the Circular/Office Memorandum No. AB/14017/12/88-Estt (RR) dated 25.03.1996 which *inter alia* states as follows:

“2. In the light of the Supreme Court judgment in R. Prabha Devi and others versus Government of India in Civil Appeals Nos.2040-42 of 1987 decided on March 8, 1988 on the judgment and order dated Feb 11, 1986 of the Central Administrative Tribunal, New Delhi and in continuation of O.M. of even No. Dated 23.10.1989 Government have decided to amend para 3.1.2 of Part. III in this Department’s O.M. No.AB/14017/12/87-Estt(RR) dated 18th March, 1988. Accordingly, the last sentence of para 3.1.2 will stand amended to reach as under:-

“To avoid such a situation the following note may be inserted below the relevant service rules/column in the schedule to the Recruitment Rules.

Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying/eligibility service.”

7. In support of the submission, learned senior counsel urges that the petitioners would fulfil the criteria given that they have a combined service of more than 3½ years in the cadre of JAs and SJAs. Learned counsel relied upon the judgment of the Division Bench of this Court in *Yadunath Singh v. Union of India and Ors.* [W.P.(C) 7298/2012, decided on 27.03.2014] 210 (2014) DLT 36..

8. It was argued that the rule in question visualises eligibility for three categories or classes of employees and officers by way of selection.

9. The first is - graduate with five years' regular service in *inter alia* the cadre of SJA. The second category is seven years' regular service in the post of JA or *inter alia* JJA and the third category would be combined service in the cadre of SJA/JA. In the present case, the petitioners urge that since their juniors in the cadre of SJA (whose names have been extracted in the earlier part of the judgment) have been allowed to compete, they too would get the benefit of the Circular/OM dated 25.03.1996.

10. It is submitted that the meeting of the concerned committee for review of rules which had been approached by the petitioners to be permitted to compete, has proceeded on an entirely tangential basis to say that the Circular/OM dated 25.03.1996 is inapplicable. It is submitted that the view negates the rights of the petitioners to be considered to be permitted to compete with the juniors.

11. The scope of the present proceedings – as is apparent from the preceding narrative, is limited. It is whether the petitioners who have put in 3½ years as SJAs can be permitted to appear in the examination held for the purpose of promotion to the post of AOJ/CM.

12. The petitioners are correct in contending that there are two categories entitled *per se* to the promotional avenue – SJAs and JAs. The SJAs are required to possess five years' regular service in the category which neither the petitioners nor their juniors possess; equally the petitioners and their alleged juniors are not JAs in *presenti* or working as such. Therefore, to trace

eligibility, if at all, the third option of combined service, which appears to recognize that there are categories of individuals who might have put in even ten years of combined service but would still be ineligible given the nature of the rules, are entitled to compete.

13. In essence, the third category entitles and makes eligible those possessing a combined eligibility service of seven years. It is important to notice that but for such rule, SJAs with less than five years service but with more than five years service as JAs would have been ineligible. Therefore, the combined service rule obliterates the distinction between JAs and SJAs. Rather, it emphasizes that the experience as JAs is more important. If that situation is to be kept in mind, it is not the petitioners' plea that they were seniors to the named individuals. Rather, they concede that they were juniors.

14. In these circumstances, the Court is of the opinion that even otherwise, *per se*, the Circular/OM of 25.03.1996 would be inapplicable. The Court is also of the opinion that neither they nor their alleged juniors claim eligibility on the fact that they have five years' experience as SJA. Such being the case, the fact is that substantial part of their service was as JAs on which both fall back upon. If that really is the position, the petitioners were not seniors to those mentioned in para 9(i) of the writ petition.

15. As far as the submission that the Committee went wrong in denying the applicability of Circular/OM dated 25.03.1996 is concerned, this is what was in fact considered and stated in the minutes of 09.02.2017 by the Committee of this Court the extracts of which are as follows:

3. (a) To consider 4 representations received in the month of December 2016 (January 2017 from Mr. Anil Yadav, Mr. Sandeep Kumar, Mr. Subhash Chand and Mr. Manmeet Singh, Senior Judicial Assistants of this Court requesting for amendment in Notification No.556/Estt/EI/DHC dated 24.09.2016 in respect of recruitment rules of Admn. Officer (Judl) and Court Master. Considered. The Committee is of the view that the Office Memorandum dated 25th march, 1996 would not be applicable to the representationists as it pertains to the juniors in the same cadre/post and it would be applicable only to seniors in the same cadre/post. The Committee observes that since the cadres/posts of Judicial Assistants and Senior Judicial Assistants are different; the question of inter-se seniority does not apply. The Committee recommends rejection of the representations.
- (b) To consider representation dated 16.01.2017 received from Mr. Anil Yadav, Senior Judicial Assistant referring to some more facts in support of his prayer made in his earlier representation dated 07.12.2016 for amendment in the recruitment rules for the post of Admn. Officer (Judl) and Court Master.

16. This Court is of the opinion that the views expressed cannot be said to be arbitrary.

17. The Court has not expressed any opinion on the merits of the petitioners' claim for the other relief that they were not on *ad hoc* basis but were actually regularly promoted.

18. For the above reasons, the Court is of the opinion that there is no merit in the writ petition. It is accordingly dismissed along with the pending applications.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

JULY 24, 2017/ajk

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