

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.14392 of 2003 (O&M)

Sh. Sukhbir Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

2. CWP No.4845 of 2001

Neeraj Kush

... Petitioner

Versus

State of Haryana and another

... Respondents

Date of Decision: 15.11.2018

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jitender Dhanda, Advocate,
for the petitioner in CWP No.14392 of 2003.

Mr. Kshitij Sharma, Advocate,
for the petitioner in CWP No.4845 of 2001.
for respondent No.3 in CWP No.14392 of 2003.

Ms. Shruti Jain Goyal, DAG, Haryana.

Mr. H.N. Mehtani, Advocate and
Mr. Parvesh Kumar Banwal, Advocate,
for the respondent-HPSC.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.14392 of 2003, *Sh. Sukhbir Singh v. State of Haryana and others* & CWP No.4845 of 2001, *Neeraj Kush v. State of Haryana and another*.

2. The dispute in this case is regarding inter se seniority between the petitioner-Sukhbir Singh and the 3rd respondent-Neeraj Kush in the cadre of District Attorneys in the State of Haryana. The petitioner claims seniority over Neeraj Kush from the date of joining service which was

earlier than Neeraj Kush. By the impugned order dated May 13, 2003 the competent authority decided the petitioner's representation against him holding that date of joining is immaterial in view of Rule 11 of the Haryana State Prosecution Legal Services (Group-A) Rules, 1979 ("1979 Rules") which governs seniority of direct recruits providing that it is to be determined on the basis of merit determined by the Haryana Public Service Commission which shall not be disturbed. By applying this rule, the petitioner would rank junior to Neeraj Kush in the cadre as per the joint merit list of candidates forwarded by the Commission to the Government for making appointments.

3. The substance of the dispute lies in a narrow campus which has arisen because the topper Ashwani Kumar Mehta at merit position No.1 in the general category declined the offer of appointment as in the meanwhile, he had been selected as a Subordinate Judge. Mehta had relinquished his right to appointment without joining charge of the post of District Attorney offered to him and that is how the post remained vacant. Some relevant facts which are necessary to comprehend the dispute are as follows:-

4. On January 18, 2000 the Government sent a requisition for filling up six posts of District Attorney. The Commission issued advertisement for filling these six posts on February 16, 2000. On March 15, 2000 one more post was added to the already advertised six posts to make the requisition for seven posts. A corrigendum was issued on March 23, 2000 for the 7th post with reference to the already six posts advertised. A writ petition was filed praying that the corrigendum increasing post to seven could not have been issued and rather a fresh advertisement should have

been for filling one post so that all eligible persons should have a chance to apply for the one extra post. The Commission admitted that one consolidated requisition for seven posts was received from Government. The writ petition (CWP No.3864 of 2000) was accepted and a direction was issued to the Commission on June 02, 2000 to issue fresh advertisement for the increased number of posts which was one in number. Of the six posts of District Attorney three were earmarked for General category candidates, one post for BC, one each for SC(A) and SC(B) were kept reserved. The fresh advertisement was issued which invited applications from 326 candidates in different categories. The interviews were conducted in the months of June and July, 2000. The Commission recommended seven candidates for General category, two for BC and four for SC(A) and SC(B). The name of Neeraj Kush was recommended as “additional” name in the list provided by the Commission for recruitment on six posts of District Attorney. Haryana Government instructions dated October 28, 1993 make provision for appointments from waiting list candidate to the extent of 25% of the posts advertised and selection made within the life of waiting list.

5. Petitioner says that there is no provision for recommending a candidate as additional candidate instead of waiting list candidate. They urge that even if it is assumed that waiting list or additional list are one and the same thing, it is inexplicable that where was the necessity to mention the word “additional” in the recommendation list or was it merely a calculated move to bury the instructions with ulterior motive. Therefore, the recommendation of Neeraj Kush as additional candidate was misapplication of the instructions. Vacancies which occur after the period of six months

from the date of recommendations are to be advertised and filled by way of selection on open merit. Though the original list was issued by the Commission on July 19, 2000 it remained valid until January 19, 2001. It is contended that the claim of Neeraj Kush, if any, could have come into existence only after January 19, 2001, the day when the life of the original list expired.

6. Ashwani Kumar Mehta relinquished his rights to appointment by his letter dated December 14, 2000 foregoing the offer. Advertisement No.4 was published on February 16, 2000 with last date March 16, 2000 for submission of application forms. Neeraj Kush applied for the post. On March 23, 2000 a corrigendum was issued including in it one more post. CWP No.3864 of 2000 was allowed on June 02, 2000. Advertisement No.3 was issued on June 10, 2000 with closing date June 26, 2000. Advertisement No.3 was for recruitment to one post of District Attorney. Meaning thereby, it was a fresh and open advertisement inviting applications from eligible candidates. Petitioner Sukhbir Singh applied under this advertisement. There was a note in the notice which reads as follows:-

“It is the same post about which an announcement/corrigendum with reference to Advt. No.4 was published on March 23, 2000”.

7. Recommendations under advertisement No.4 were made by the Commission on July 19, 2000 and the name of Neeraj Kush stood at at Sr. No.4 as the additional candidate. Ashwani Kumar Mehta at merit position 1 gave up his right on December 14, 2000. When Neeraj Kush came to know of this, he represented to the Government to offer him appointment from the

waiting list as additional candidate in the recommendations of the Commission. His case was processed and he was appointed on July 09, 2001 as District Attorney. This was within one year from the date of recommendations. Fact that petitioner Sukhbir Singh had applied pursuant to subsequent advertisement No.3 of 2000 is not disputed. To emphasize, the advertisement No.3 was subsequent to advertisement No.4 in the same year and at first blush causes some confusion in the mind but it matters little since the 2nd advertisement was issued pursuant to the direction of this Court while allowing CWP No.3864 of 2000 on June 02, 2000. The petitioner Sukhbir Singh was successful in advertisement No.3 and joined service with his name recommended on July 26, 2000 against the single post. He was offered appointment on December 06, 2000. He joined service on December 08, 2000.

8. A tentative gradation list of members of the service was circulated by the department by letter dated April 10, 2002 where the petitioner's name was placed below Neeraj Kush. The petitioner objected claiming that his name be shown above Neeraj Kush since he joined service earlier. The representation was decided by a non-speaking order which led to filing of a writ petition by petitioner Sukhbir Singh which was disposed of with a direction to the respondents to pass a fresh reasoned order. That is what has led to the passing of the impugned order dated May 13, 2003 (P-21). The petitioner has assailed that order in this petition and prays that it be quashed and inter se seniority re-fixed.

9. The State has filed a written statement contesting the case. The State refutes the claim of the petitioner to be shown senior to Neeraj Kush

for the simple reason that seniority has to be determined on the basis of their placement in the two different selection-cum-merit lists. The Commission recommended the name of 3rd respondent-Neeraj Kush against the first requisition sent by the respondent-State and the name of the petitioner was recommended against the second requisition. Seniority has to be fixed in case of direct recruitment in the order of merit determined by the Commission as per rule 11 of the rules. Admittedly, the petitioner was selected by the Commission in the subsequent selection list dated July 26, 2000 whereas Neeraj Kush was selected in the earlier list dated July 19, 2000. Subsequently, the Commission determined their joint seniority and intimated to Government vide letter dated December 14, 2001 which the State affirms by stating that Neeraj Kush was rightly placed higher than the petitioner who was placed below all the recommendees of the first selection list of July 19, 2000.

10. Moreover, the petitioner did not fulfill the requisite experience of seven years as an advocate on March 16, 2000 i.e. the closing date of advertisement No.4 against which Neeraj Kush was selected. Accordingly, the petitioner cannot claim parity with candidates who applied against advertisement No.4 to which he was not an applicant. Merely because he was appointed earlier would make no material difference as far as seniority is concerned. Both belong to different categories with the differentia being reasonably classified. Neeraj Kush had no right until candidate in the main list relinquished his right which right accrued to him when Ashwani Kumar Mehta surrendered his right vide letter dated December 14, 2000 on selection as Subordinate Judge. The date of joining is consequently

immaterial when both belong to different selection processes.

11. Neeraj Kush had to represent to Government which took time to mature into appointment from the waiting list. Therefore, the merit position of Neeraj Kush is to be determined from his batch as he would step into the shoes of Ashwani Kumar Mehta one step lower in merit-cum-seniority position than the person at merit position No.2 with reference to advertisement No.4 of 2000. By application of rule of seniority according to Rule 11 of the 1979 Rules merit determined by the Commission is not to be disturbed. The merit position from wait list candidate's upward movement brings Neeraj Kush into the zone of successful candidates within the advertised vacancies as per the first requisition. It makes no difference in my view whether you call it a waiting list or an additional recommendation. Accordingly, the distinction sought to be drawn by Mr. Jitender Dhanda for the petitioner that the name of the petitioner was not on the waiting list but as additional name has no substance and is rejected while dealing with the inter se seniority position of the petitioner and Neeraj Kush since they belong to different batches. In these circumstances, date of joining is a fortuitous circumstance despite the fact that the petitioner was appointed earlier or that Ashwani Kumar Mehta refused appointment as late as on December 14, 2000. This is what the impugned order does while taking stock of the legal position that the claim based on date of joining is untenable in view of Rule 11 of the 1979 Rules and the fact that there were separate requisitions first offering **six** posts including reserved vacancies while the other is single post to add up to seven posts. Moreover, Neeraj Kush appeared for the interview on June 12, 2000. It is not a case of joint

selection. The result for six posts of District Attorneys was declared on July 19, 2000 and the result of one separate post was declared on July 26, 2000.

12. Mr. Dhanda for the petitioner points out from letter dated May 05, 2010 (P-27) that the vacancies of six District Attorneys for which requisition was sent to the Commission including the post occupied by the petitioner and Neeraj Kush were created on December 15, 1998 and September 11, 1999 and, therefore, the petitioner would have a preferential right above Neeraj Kush. But the fact remains that on the cutoff date the petitioner was not eligible as he did not possess experience of seven years as a practicing Advocate. No one has a right to be appointed against a particular vacancy. The impugned order does not suffer from any error.

13. For what has been said before, I find no merit in the first petition by Sukhbir Singh and the same is dismissed. Neeraj Khush ranks higher in seniority to Sukhbir Singh. The petition filed by Neeraj Kush for a direction to the respondents to issue formal order of appointment and allow him to join the post of District Attorney has been rendered infructuous on account of his appointment to service during the pendency of the litigation on acceptance of his representation by the department. It is ordered accordingly. There will be no order as to costs.

(RAJIV NARAIN RAINA)
JUDGE

15.11.2018
manju

Whether speaking/reasoned Yes

Whether reportable Yes