

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

Date of Decision:8.10.2018

1. CWP No.15865 of 2018 (O&M)

Rohtash Kumar & Others ... Petitioners

Versus

State of Haryana and others ... Respondents

2. CWP No.20097 of 2018 (O&M)

Sunil Kumar ... Petitioner

Versus

State of Haryana and others ... Respondents

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

Present: Dr.Anmol Rattan Sidhu, Sr.Advocate with
Mr.Shiv K.Sharma, Advocate &
Mr.H.S.Aulakh, Advocate for the petitioners
in CWP No.15865 of 2018

Mr.Jagjeet Beniwal, Advocate for the petitioner
in CWP No.20097 of 2018

Mr.Harish Rathee, Sr.DAG, Haryana

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP Nos.15865 and 20097 of 2018 as common questions of law and facts are involved in both the writ petitions. For the sake of brevity, the facts are taken from CWP No.15865 of 2018.

2. I have heard learned senior counsel and Mr. Beniwal for the respective parties and have also perused the paper-book with their assistance.

3. The short question which falls for consideration in these two writ petitions is whether Conductors serving in Government, Semi-Government and Public Undertakings are eligible to apply for the post of Station Supervisor notified by Public Advertisement No.7 of 2015 published in Newspaper on 10th July, 2015 (Annex. P-1) by the Haryana Staff Selection Commission, Panchkula. It is not necessary to dwell on facts or milestones in the selection process for direct recruitment against the advertised vacancies of General and Reserved Categories for appointment in the Transport Department, Haryana.

4. The post of Station Supervisor is governed by the provisions contained in the Haryana Transport Department (Group-C) Haryana Roadways Service Rules, 1995. Appendix "B" to the Rules provides essential qualifications for direct recruitment- (i) Graduate; (ii) Minimum five year experience in Motor Road Transport government, or Semi-Government Department or Public Undertakings and for appointment other than by direct recruitment- (i) Matriculation with Hindi; (ii) Five years experience as a Chief Inspector, Welfare Inspector in Haryana Roadways. The post of Station Supervisor is classified as Operational Staff in Appendix "B" of the aforesaid Rules. The feeder cadres for promotion to the post of Station Supervisor are from the post of Chief Inspector and Welfare Inspector. This means that Station Supervisor is recognised as post of

higher duties and responsibilities than the post of Chief Inspector and Welfare Inspector. A conductor cannot be promoted to Station Supervisor under the rules. His experience as a Conductor would not make him eligible for direct recruitment to the post of Station Supervisor since he cannot be promoted to that post bypassing the rights of others. Although the rule is silent as to experience of supervisory nature, but it has two important aspects and milestones; one is as a result of an earlier advertisement of 2007 for the same post where also a Conductor approached this Court in CWP No.2002 of 2011 (Naresh Kumar vs. State of Haryana and others decided on 17th May, 2012). In the said writ petition, the then Secretary of the Haryana Staff Selection Commission had filed an affidavit stating that as per Clarification of Transport Commissioner, Haryana dated 19th December, 2017, only those candidates are eligible for the post of Station Supervisor who have experience of 5 years in supervisory capacity in Govt./Semi Govt. or Public Undertakings on Traffic side. This Court relied on the aforesaid affidavit and dismissed the writ petition on 17th May, 2012 holding that the petitioner not being eligible cannot have any grouse against the cancellation of the advertisement. The 2007 advertisement was cancelled on the ground that no eligible candidate was available, and therefore, the process of selection could not proceed to fruition. It is not the result of the litigation that mattered, but the acceptance of the affidavit ruling out of consideration Conductors who did not possess supervisory experience. Feeling aggrieved, the petitioner filed LPA No.1519 of 2012 (Naresh Kumar vs. State of Haryana and another) which was

dismissed on 8th November, 2012. After 2007. The selection process was rendered infructuous.

5. For the first time since the abortive attempt made in 2007, vacancies of Station Supervisor were advertised vide advertisement of 2015. The petitioners have placed strong reliance on a favourable clarification dated 18th August, 2017 issued by the Director State Transport, Haryana, Chandigarh to the Haryana Staff Selection Commission that qualification for the post of Station Supervisor is Graduate. Experience of Conductor, Driver, Steno and Clerk or any post in Transport Department/Semi-Government is eligible if has 5 years experience in Motor Road Transport in Government and Semi-Government department or Public Undertaking. The experience of Cooperative Transport Societies is not to be considered valid.

6. The Government in its written statement put in to contest the case has taken the stand that this clarification was an erroneous decision which was superseded by fresh instructions dated 4th July, 2018 by way of clarification regarding experience required under Advertisement No.7 of 2015, Category 22. The letter dated 18th August, 2017 was withdrawn by Office Letter No.3174/AE2/E2 dated 28th May, 2018. The clarificatory instructions dated 4th July, 2018 read as under:-

“Reference your letter No.1/115/2017-3S/1902 dated 21.05.2018 and No. 1/115/2017-3S/3942 dated 27.7.2017.

2. The clarification given to the Commission vide letter No.5910/AE2/E2 dated 18/08/2017 was withdrawn vide this office letter No.3174/AE2/E2

dated 28/05/2018 and the Advocate General Haryana was also intimated in connection with CWP No.10754 of 2018 titled as Sandeep vs. State of Haryana.

2. The matter is clarified as follows:-

1.The Post of Station Supervisor is governed within purview of Haryana Transport Department (Group-C) Haryana Roadways Service Rules, 1995, the mode of recruitment as per Rule 9 (1) (operational staff) (a) has been by promotion from amongst Chief Inspector, Welfare Inspector; or by direct recruitment; or by transfer or deputation. In case of direct recruitment Appendix "B" provides the academic qualification and experience as under:-

(i) Graduate

(ii) Minimum five years experience in Motor Road Transport Govt. or Semi Govt. Department or Public Undertakings.

Therefore, the experience rendered in Motor Road Transport Govt. or Semi Govt. or Public Undertakings for posts having supervisory capacity will be admissible for direct recruitment. The post of Station Supervisor is of higher responsibility, therefore, the supervisory nature of experience is pre-requisite. The post is carrying higher responsibilities, which is also a promotional post in line of hierarchy i.e. from Conductor- Sub Inspector- Inspector- Chief Inspector/Welfare Inspector, therefore, experience of supervisory capacity is as per rules.

2. Answer to this query is correlated with aforesaid answer at 1, keeping in aspect the supervisory nature of experience, the experience of Conductor, Driver, Steno, Clerk etc./ or the post of not supervisory in nature, shall not be counted for calculating 5 years of experience.

3. The provision in the rules is clear, which prescribes the experience in Motor Road Transport rendered in Govt. or Semi-Govt. or Public Undertakings, therefore, the experience of Cooperative Transport Societies shall not be considered.

4. ESMs who have worked/gained experience in Motor Road Transport of the posts having supervisory nature of job shall be countable for the purpose under the rules.”

7. In the written statement, the State has stressed that the post of Station Supervisor is a post of higher responsibility and the incumbents are overall in-charge and supervise the work of Conductors/Sub Inspector/ Inspector/Chief Inspector. The functions of Station Supervisors are of supervisory nature being incharge of Bus Stands and responsible for timely operation of buses, checking of inspections team, dealing with public complaint correspondence and redressal of grievances etc. Thus, the Department was well within its right to seek persons possessing five years experience as prescribed, in performing duties of a supervisory nature. Though in the rules, there is no mention of supervisory experience but keeping in view the nature of duties and responsibilities of the post, clarificatory instructions have been issued which rightly deprives consideration of Conductors for the post of Station Supervisor. This view was also

expressed by this Court by relying on the affidavit which led to the dismissal of CWP No.2002 of 2011. The interpretation to the rule as projected by the State appears more meaningful to me when the qualification and eligibility for the post of Station Supervisor is seen from the angle of direct recruitment and promotion. The promotion rule, which is not irrelevant in the understanding of a case of direct recruitment, informs that for Chief Inspector, the promotion is from amongst Inspectors who possess five years experience. The post of Inspector is promotional post of Sub Inspector having five years of experience. Sub Inspector is promotional post of Conductor or Booking Clerk having five years experience. Therefore, the State has argued that the post of Station Supervisor is a supervisory post needing finer experience. There is every indication in the law of precedents that clarifications issued by way of executive instructions cannot supplant the rules, but can fill in the gaps and supplement them by providing experience gained in supervisory capacity for direct recruitment. It is well settled that Article 162 of the Constitution of India confers power on the executive to the extent of its legislative power, and therefore, instructions/clarifications can be issued to tone up the rule without destroying its basic elements by making it relevant and more in line with public interest. It is also well settled that instructions can supersede instructions by removing any administrative error. It is for these reasons the petitioners have no vested or existing right under the superseded instructions dated 4th July, 2018. The State has the prerogative to define and refine the condition of experience in the eligibility criterion.

8. For what has been observed above, I find no valid ground warranting interference at the hands of Conductors. Accordingly, both the writ petitions are dismissed.

8.10.2018	(RAJIV NARAIN RAINA)
MFK	JUDGE
<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>