

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.643 of 2014

Date of Decision: 31.08.2018

Bajinder Singh

... Petitioner

Versus

The Haryana State Agricultural
Marketing Board and others

... Respondents

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

Present: Mr. A.K. Walia, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

Mr. Pritam Saini, Advocate,
for the respondent-Board.

RAJIV NARAIN RAINA, J.(Oral)

1. This petition has been filed claiming promotion to the post of Administrative Officer from back date. The controversy lies in a narrow compass. It is confined only to proper implementation of quota rule of promotion from two sources, Superintendents and Private Secretaries. Facts are not in dispute.

2. If this petition succeeds the petitioner can only be given promotion from the date when respondent No.5-Shakuntla Rani was promoted as Administrative Officer. The post of Administrative Officer is filled by way of promotion from the feeder cadre of Superintendents and Private Secretary in the ratio of 4:1. Meaning thereby, four Superintendents are to be promoted as Administrative Officer and then the turn of a Private Secretary would materialize, provided they had requisite experience of three years as Superintendents and Private Secretary. As revealed from record the

turn from the Superintendent line had matured for promotion as Administrative Officer but none was available in the cadre with the requisite experience of three years. Therefore, the decision was taken to promote senior most available Private Secretary, namely, Ashok Kumar Gupta in administrative exigencies. When the decision to promote Ashok Kumar Gupta was taken, the Departmental Promotion Committee had decided that the next post of Administrative Officer in the block of four vacancies will be filled up continuously from Superintendents.

3. After promotion of Ashok Kumar Gupta, four Superintendents, namely, Rohtas Nambrayan, Ashok Sharma, Joginder Singh and Zile Singh Sarin were promoted. When the claim of the petitioner matured for promotion as Administrative Officer from the post of Superintendent the Committee deliberated on Item No.9 in the DPC meeting held on May 16, 2013 and recommended the name of the respondent Shakuntla Rani from the post of Private Secretary. She was the senior most Private Secretary and had the requisite experience of three years. The recommendations were accepted and she was promoted by ignoring the claim of the petitioner. Had Ashok Kumar Gupta not been promoted from the Private Secretary line as Administrative Officer there is no doubt that the ratio of 4:1 would have been maintained and the vacancy of 2013 would have gone to the senior most Superintendent. The petitioner was a senior most Superintendent in 2013.

4. The petitioner has impleaded the Secretary of the Board by name and levelled allegations of bias and mala fides against him to favour respondent No.5 who was Private Secretary to the officer. He has not filed a

reply to admit or deny the allegations.

5. During the pendency of this petition, both the petitioner and respondent No.5 have retired from service.

6. It is the contention of Mr. Walia for the petitioner that the ratio of 4:1 has to be maintained block-wise. The thread of the ratio, broken by Ashok Kumar Gupta (Private Secretary), was in exceptional circumstances and his name would remain in the same block and not be carried forward to the next block so that the ratio is maintained properly in service. Any departure would break down the quota and lead to heartburn, as in this case.

7. Accordingly, the decision of the Committee taken at that time when Ashok Kumar Gupta was promoted as Administrative Officer will not be binding on the rights of the petitioner if the ratio of 4:1 is to be maintained and the promotion rule adhered to. Mr. Walia cites from the Haryana State Agricultural Marketing Board Service Rules, 2008. Serial No.13 in Appendix 'B' lays down the rule of recruitment to the post of Administrative Officer which reads:-

13 <u>Administrative Officer</u> -	Graduate from a recognized University with three years experience as Superintendent/ Private Secretary.	By promotion from amongst the Superintendents and Private Secretaries or by transfer or deputation of an officer already in the service of State Government. Note: Superintendent and Private Secretary shall be promoted in the ratio of 4:1 provided that the total strength on this post from the cadre of Private Secretary shall not exceed more than fifty percent.
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8. The Note to the rule makes the ratio mandatory with the use of the word “shall” i.e., Superintendent and Private Secretary shall be promoted in the ratio of 4:1 provided that the total strength on this post from

the cadre of Private Secretary shall not exceed more than fifty percent. If the ratio has to be given its full effect, I have no doubt that promotion granted to Shakuntla Rani was in negation of the rights of the petitioner for consideration for promotion as Administrative Officer. The reasoning given by the Committee in Item No.9 is fallacious and appears to create a fait accompli in favour of Shakuntla Rani. The entire decision deserves to be reproduced and reads as under:-

“The case regarding promotion to the post of Administrative Officer was considered by the Committee at length. Two Superintendents namely Sh. Bijender Singh and Sh. Usha Gupta have the requisite experience for the post of Administrative Office and one Private Secretary Smt. Shakuntla Rani also has the requisite experience for the post of Administrative Officer. Administrative Committee considered the rules regarding promotion for the post of Administrative Officer.

For the promotion to the post of Administrative Officer, the ratio being adopted is 4:1 from Superintendents and Private Secretaries meaning thereby after promoting 4 Superintendents the case of Private Secretary shall be considered for the promotion to the post of Administrative Officer. One Private Secretary Sh. Ashok Kumar Gupta was earlier promoted to the post of Administrative Officer. He was promoted to the post of Administrative Officer at that time as there was no Superintendent available with requisite experience of 3 years. The Committee while promoting Sh. Ashok Kumar Gupta as Administrative Officer decided that next post of the Administrative Officer in the block of four will be filled up continuously from the Superintendents. After promotion of Sh. Ashok Kumar Gupta, four Superintendents namely S/Sh. Rohtas Nambrayan, Ashok Sharma, Joginder Singh and Zile Singh Sarin were promoted. In view of this, the committee observed that this time the post of Administrative Officer should be filled up from amongst the eligible Private

Secretaries. As Smt. Shakuntla Rani has the requisite experience of three years and being senior most Private Secretary, therefore, the Committee decided to promote her to the post of Administrative Officer with effect from 01.06.2013 after the retirement of Sh. Zile Singh Sarin on 31.05.2013.”

9. The Committee fell in error in construing the provisions of Sr. No.13 of Appendix 'B' to the rules.

10. As a result, this petition succeeds and is allowed. The petitioner is held entitled to promotion from the date when Shakuntla Rani was promoted as Administrative Officer. A direction is issued to the respondents to consider promoting the petitioner as Administrative Officer with all consequential benefits from the date when Shakuntla Rani was promoted. An order to this effect be passed in the case of the petitioner within two months.

11. In the special facts and circumstances of this case, both the petitioner and Shakuntla Rani will be deemed to have retired on the post of Administrative Officer. The Board may make suitable arrangement/fitment in the case of Shakuntla Rani for the period she served as Administrative Officer till retirement on superannuation so that, that period is regularized.

12. However, the success of this petition will not have any adverse financial effect on Shakuntla Rani, since retired or on those promoted meanwhile.

(RAJIV NARAIN RAINA)
JUDGE

31.08.2018
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Whether speaking/reasoned Yes

Whether reportable No