

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.713 OF 2019

1. **Mr.Vasant Khela Sarak,**]
Aged 57 years, R/at. 603 Rajlaxmi,]
5A/5B Co-op. Housing Society Ltd.,]
Kharigaon,]
Near Vitthal mandir, Kharigaon,]
Thane, Dist. Thane-400 605]
]
2. **Mr.Shalikram Pralhadrao Borey,**]
Aged 54 years r/at. 703-B, Building]
No.3, Mangeshi Dream City CHS Ltd.,]
Kolivali Village, Adharwadi Jail Road,]
Kalyan (W), Kalya, Dist. Thane.]
]
3. **Ms.Smita Rajnikant Joshi,**]
Aged 51 years, R/at. E-3/49,]
Vishramyog Society, Near Don Bosco]
School, L.T. Road, Borivali (W),]
Mumbai 400 605.]
]
4. **Mr.Sudarshan Rajlingam Katkam,**]
Aged 51 years, R/a. Hari Om Valley-]
Phase-II, Bldg. No.5, Flat No.104,]
Manda-Titwala (E), Dist. Thane 421]
605.]
]
5. **Mrs.Shambhavi Nilesh Sivgan,**]
Aged 49 years, R/at. Hari Om Valley-]
Phase-II, Bldg. No.5, Flat No. 104,]
Manda Titwala (E), Dist. Thane- 421]
605.]
]
6. **Mr.Anand Sudhakar Sudame,**]
Aged 47 years, R/a. A-17/2, In front of]
Udupi Hotel, Govt. Colony,]
Bandra (E), Mumbai – 51.]
]

7. **Mrs.Meera Mahesh Jadhav,**]
 Aged 43 years, R/at : 403, Om]
 Raghuveer CHS, Samantwadi, Uthalsar,]
 Thane (W),]
 Thane – 400 601.]
]
 (Occ : All the Petitioners are in service]
 as Personal Assistant to the Hon'ble]
 Judges,]
 High Court, Bombay, on Appellate Side/]
 Original Side, High Court, Mumbai.].. Petitioners

Versus

- (1) **State of Maharashtra**]
 (through The Secretary,]
 Law and Judiciary Department,]
 Government of Maharashtra,]
 Mantralaya, Mumbai 400 032.]
]
 (2) **The Registrar General**]
 Bombay High Court,]
 Mumbai – 400 032.]
]
 (3) **The Registrar (Personnel),**]
 Bombay High Court,]
 (G.T. Hospital), Mumbai 400 032.].. Respondents

Ms.Rajani Iyer, Senior Advocate a/w. Mr.Ramesh Ramamurthy and
 Mr.Saikumar Ramamurthy for petitioners.

Mr.Amit Shastri - AGP for respondent No.1-State.

Mr.Rahul Nerlekar for respondent Nos.2 and 3.

**CORAM : RANJIT MORE &
 N.J. JAMADAR, JJ.**

Reserved for Judgment on : 13th September 2019.

Judgment Pronounced on : 26th September 2019.

JUDGMENT (PER N. J. JAMADAR, J.) :

1. Rule. Rule made returnable forthwith and with the consent of the learned counsels for parties, heard finally.

2. The petitioners, who are working on the establishment of this Court as ‘Personal Assistants’, have filed this petition taking exception to the prescription of shorthand test, as a selection criteria, for promotion to the post of ‘Private Secretary’ to the Judges of this Court.

3. Before institution of this petition, the petitioners had submitted a representation to the High Court Administration on 3rd September 2018 for dispensing with shorthand test for promotion to the post of Private Secretary to the Judges. The High Court Administration, by communication dated 11th February 2019, informed the petitioners that the representation dated 3rd September 2018 was considered by the Administrative Judges’ Committee in its meeting held on 23rd January 2019, and it has been decided to reject the said representation. The petitioners have, thus, assailed the said communication, dated 11th February 2019 and have sought a declaration that Rule 13 of the High Court Appellate Side Service

Rules, 2000 (hereinafter referred to as ‘the Service Rules, 2000’) does not envisage holding of a shorthand test, and a consequential direction to the High Court Administration that the petitioners be promoted to the post of Private Secretary without conducting shorthand/typing test.

4. The background facts giving rise to the present petition, can be stated, in brief, as under :-

(A) The petitioners claim that, since the date of their entry in the service, they are working on the post of “Personal Assistant”. Prior to 25th October 1982, there were only two cadres, namely, “Court Stenographer”, an entry level post, and “Personal Assistant”, a further diversional post, both carrying one and the same pay-scale of Rs.750-1150. The lack of promotional avenues led to stagnation and frustration among the persons holding the said posts. Thus, promotional posts of ‘Personal Secretary’ and ‘Private Secretary’ carrying a

higher pay-scale, were created with effect from 25th October 1982. The cadre then consisted of :

(A)	Court Stenographer	:	Entry level	Rs.750-1150
(B)	Personal Assistant	:	Diversion from 'A'	Rs.750-1150
(C)	Personal Secretary	:	Promotion from 'B'	Rs.680-1250
(D)	Private Secretary	:	Promotion from 'C'	Rs.1000-1500

(B) The petitioners assert that since underlying purpose of creation of promotional posts of Personal Secretary and Private Secretary, was removal of frustration among the Personal Assistants, upto the year 1991 those posts were filled on the basis of well recognized and accepted principle of seniority, without holding shorthand test and even viva-voce. For the first time in September 1991, the following criteria came to be prescribed for promotion to the post of Private Secretary :-

“The Criteria for promotion shall be merit-cum-seniority to be adjudged with reference to confidential records and dictation-typing and interview tests. Leave and attendance records shall also be taken into consideration.”

(C) The aforesaid criteria was challenged by one Mr.B.S.Nayak. This Court upheld the challenge to the prescription of the said criteria. In an appeal by the High Court Administration, the Supreme Court in *The Honourable Chief Justice of Bombay Vs. B.S. Nayak and Others*¹ set aside the decision of the High Court and observed *inter-alia* that in the absence of any rules framed by the Court or the Hon'ble Chief Justice, the direction of the Hon'ble Chief Justice operates in the field of appointment. That being the position, the Hon'ble Chief Justice was within his jurisdiction in deciding the norms of merit-cum-seniority for filling up the posts of Private Secretaries.

(D) The petitioners further assert that, thereafter, the Hon'ble the Chief Justice, in exercise of the powers conferred by Article 229 of the Constitution of India, framed 'Bombay

1 (2001) 9 SCC 763

High Court Appellate Side Service Rules, 2000’.

Rule 13 regulates the appointment to the post of Private Secretary by way of selection from amongst the persons, who have served as Personal Assistants, for not less than two years. Rule 13, thus, nowhere envisages conducting a shorthand test.

(E) Thus, according to the Petitioners, there is no mandate for holding the shorthand test, especially when there is no material difference in the duties to be discharged by the Private Secretary and Personal Assistant. It is asserted that the Personal Assistants have already cleared the shorthand and typing tests, while entering the feeder cadre of Personal Assistant and they cannot be again subjected to the further test; which in the case of the candidates like the petitioners, who have put in a number of years of service, operates to their prejudice.

(F) As indicated above, the petitioners had

submitted the representation seeking doing away with the shorthand test and the same has been rejected by the High Court by the impugned communication dated 11th February 2019. Hence this petition.

5. The respondent Nos.2 and 3 have resisted the petition by filing an affidavit-in-reply. The respondent Nos.2 and 3 contend that the validity of the measure of prescribing shorthand test has been expressly upheld by the Supreme Court in the case of **B.S. Nayak** (Supra). The respondent Nos.2 and 3 further assert that in view of the provisions contained in Article 229 of the Constitution of India, the Hon'ble the Chief Justice is vested with the power to frame rules and prescribe guidelines for the selection. Rule 13 in terms provide for promotion by selection, which according to the respondent Nos.2 and 3, is an application of the principle of promotion on the basis of merit-cum-seniority. Moreover, the second proviso to Rule 60 incorporates an express saving clause to the effect that the rules in force and/or the guidelines in use but not covered by the Service Rules, 2000, so far they are not

inconsistent or contradictory to the Service Rules, 2000, shall be used as guidelines.

6. Thus, the prescription of shorthand test is stated to be in conformity with the Service Rules, 2000. The shorthand test was also considered to be necessary by the Recruitment Rules Committee of the High Court and the said guidelines have been approved by the Hon'ble the Chief Justice. It is contended that no prejudice would be cause to the petitioners in undergoing the prescribed shorthand test for assessment of relative merit for promotion.

7. We have heard Ms.Rajani Iyyer, the learned Senior Counsel for the petitioners, the learned AGP for the respondent No.1-State and Shri Rahul Nerlekar, the learned counsel for the respondent Nos.2 and 3.

8. Ms.Rajani Iyyer, the learned Senior Counsel took a slew of exceptions to the prescription of shorthand test as the criteria of selection. First and foremost, according to the learned Senior

Counsel, Rule 13 of Service Rules, 2000, on its plain reading, does not empower the High Court Administration to prescribe the criteria of passing shorthand test. Secondly, in view of the pronouncement of the Supreme Court in the case of ***B.S. Nayak*** (Supra), once the Rules for recruitment and promotion have been framed, there is no authority for adopting a procedure for selection which is at variance with the Service Rules, 2000. The selection process, according to the learned Senior Counsel, must be conducted in scrupulous compliance with the Service Rules, 2000. Thirdly, it was a deliberate and conscious decision of the Rule making Authority, manifested in the Service Rules, 2000, not to provide a shorthand test. Elaborating this submission, it was urged that Rule 19, which governs the appointment of Personal Assistant, and Rule 24, which governs the appointment of Stenographers (Higher Grade), expressly provide for conducting of shorthand/typing tests. Thus, according to the learned Senior Counsel, the rule making Authority was aware of the prescription of the shorthand/typing tests and yet designedly refrained from prescribing the said test while making appointment to the post of Private Secretary. Lastly, it was submitted that having regard to the nature of the duties which Personal Assistant and Private Secretary are called upon to perform, it becomes

evident that there is no substantial change in the nature of the duties, except few additional administrative tasks to be discharged by the Private Secretaries. Thus, the criteria of passing the shorthand test, has no rational relation to the object of selection to the post of Private Secretary, urged Ms. Rajani Iyyer.

9. In contrast to this, Shri Nerlekar, the learned counsel for the respondent Nos.2 and 3 stoutly submitted that the petition is wholly misconceived. It was submitted that indubitably there is an element of selection in promotion to the post of Private Secretary from that of Personal Assistant. Shri Nerlekar would urge that the petitioners cannot draw any mileage from the selection criteria provided in Rule 19 and Rule 24, which are the posts at the entry level. The endeavor of the petitioners to demonstrate that since Rule 13 does not expressly provide for shorthand test, such test cannot be provided as a criteria for selection to the post of Private Secretary was stated to be fallacious as the very spirit of selection involves assessment of comparative merit. According to Shri Nerlekar, the observations of the Supreme Court in the case of ***B.S. Nayak*** (Supra) that the appointment to the post of Private Secretary

on the basis of seniority, without due consideration of merit, would lead to difficulties for the Judges in discharge of their functions, constitute a complete answer to the grievance sought to be raised by the petitioners. Lastly, Shri Nerlekar urged that the second proviso to Rule 60 saves the Rules and guidelines in force, at the time the Service Rules, 2000 came into effect, so far as they are not inconsistent or contradictory to the Service Rules, 2000. The prescription of shorthand test as a criteria for selection by no stretch of imagination can be said to be inconsistent or contradictory to Rule 13, urged Shri Nerlekar.

10. In the backdrop of the aforesaid rival submissions, the pivotal question which crops up for consideration is whether the prescription of shorthand test for promotion to the post of ‘Private Secretary’ is in conformity with the Service Rules, 2000 and within the province of the authority of the Hon’ble the Chief Justice? As the submissions were premised on the text and import of the Service Rules, 2000, it may be apposite to extract the relevant rules which have a bearing upon an answer to the aforesaid question.

“13 Private Secretary to the Honourable Judge – Appointment shall be by selection from amongst Personal Secretaries to the

*Honourable Judges who have served as Personal Assistants for not less than 2 years :
Provided they hold a University Degree, Preference being given to holders of Degree in Law.....*

19 *Personal Assistant – (a) Eligibility –*
The post shall be filled in from amongst the candidates who –

(i) are not less than 21 years and not more than 35 years of age; and

(ii) Possess University degree. However, this condition may be relaxed if the candidate is already working as Lower Grade Stenographer for not less than 10 years or Higher Grade Stenographer for not less than 8 years in the High Court or in any other Court or Tribunal or in the office of the Advocate General or Government Pleader, Preference being given in to candidates possessing degree in law.

(iii) Possess at least speed of 120 w.p.m. in Shorthand and 50 w.p.m. in typing.

(b) Candidates shall be selected on the basis of examination in shorthand, typing and viva-voce.

(c) The Chief Justice may nominate a Judge of the High Court for supervising the process of selection of the candidates for being included in the Select List.

.....

24. *Stenographers (Higher Grade). – Eligibility--*
The post shall be filled in from amongst the candidates who---

(i) are not less than 21 years and not more than 30 years of age; and

(ii) must have minimum speed of

120 w.p.m. in Shorthand and 40 w.p.m. in typing.

(iii) Hold University Degree, preference being given to holders of degree in law.

However, this condition may be relaxed if the candidate is already working for not less than 5 years as Lower Grade Stenographer in the High Court or in any other Court or Tribunal or in the office of Advocate General or Government Pleader.

(b) Candidates shall be selected on the basis of examination in shorthand, typing and viva-voce.

.....

60. Repeal and Savings –(i) *The existing rules governing matters dealt with by these rules are hereby superseded/replaced with effect from the date of coming the rules in force :*

Provided, however, that the suppression of the rules shall not affect substantive promotions made before these rules came into force :

Provided further that the rules in force and/or guidelines in use but not covered by these rules, so far as they are not inconsistent or contradictory to these rules, shall be used as guidelines.”

(emphasis supplied)

11. There is not much controversy over the fact that the post of Personal Assistant is a feeder cadre to the post of Private Secretary. In view of Rule 19, extracted above, for appointment to the post of Personal Assistant, the selection is on the basis of examination in shorthand/typing and viva-voce, in addition to the other qualifications. Likewise, for the post of Stenographer (Higher

Grade), which is, in turn, a feeder post to the post of Personal Assistant, the selection is on the basis of examination in shorthand/typing and viva-voce, in addition to the other qualifications. Evidently, Rule 13 does not specifically provide for holding of a shorthand test for the purpose of selection to the post of Private Secretary. However, Rule 13 provides in specific terms that the appointment shall be by selection.

12. In this setting of the matter, it was strenuously urged on behalf of the petitioners that the term “selection” does not contemplate shorthand test and the selection can be on the basis of seniority and other parameters like annual confidential report ratings and leave records etc.

13. It is incontrovertible that even prior to the enforcement of the Service Rules, 2000, since the year 1991, the selection to the post of Private Secretary had been on the basis of the dictation-typing, and interview test pursuant to the directions of the Hon’ble the Chief Justice. The saving clause, especially the second proviso thereto, evidently preserves the rules and/or guidelines which were

then in force for the matters for which no express provision is made in the Service Rules, 2000 so far as they are not inconsistent or contradictory thereto. A conjoint reading of the aforesaid Rules leads to an inference that the prescription of the criteria of selection cannot be said to be either inconsistent or contradictory to the Service Rules, 2000. Nonetheless we proceed to consider the challenges raised by the petitioners.

14. The submission on behalf of the petitioners that in view of the enforcement of the Service Rules, 2000, there is no authority to prescribe the criteria of selection is required to be appreciated in the backdrop of the observations of the Supreme Court in the case of **B.S. Nayak** (Supra). Paragraph 2 is of significance and, thus, extracted below:

“2 The appointments to the posts of Private Secretaries in the High Courts could be made by the Chief Justice as indicated in Article 229 of the Constitution. In the absence of any rules framed by the Court or the learned Chief Justice, the direction of the learned Chief Justice operates in the fields of appointment. That being the position the chief Justice was well within his jurisdiction in deciding the norms of merit cum seniority for filling up the posts of Private Secretaries and, in our opinion, that is the most befitting criteria for filling up the posts which takes into consideration the merit as a prime importance though seniority is not totally

obliterated. We do not find any justification for the Division Bench of the High Court to strike down the criteria in question on the ground that the same had not been given due publicity. The question of giving publicity to the criteria would not arise as the learned Chief Justice has formulated the criteria for filling up the posts of Privates Secretaries which he thought appropriate for efficient administration and for efficient discharge of the duties of the Hon'ble Judges. It cannot be disputed that the Private Secretaries to the Hon'ble Judges play an important role in taking down dictations and writing judgment and, if merit is not given its due consideration and appointments are made on the basis of seniority, then it would be difficult for any Judge to discharge his obligations. We, therefore, find the impugned direction of the Division Bench of Bombay High Court to be wholly unsustainable in law. We accordingly set aside the same and allow this appeal.”

(emphasis supplied)

Laying emphasis upon the aforesaid observations, the thrust of the submission on behalf of the petitioners was that since there is no provision in Rule 13 for conducting the shorthand test, the Hon'ble the Chief Justice could not have provided for criteria of passing shorthand test.

15. In our view, the rule cannot be construed in such a restrictive sense. Indubitably, the Stenographers play a vital role in dispensation of justice by the Judges. The competency and

efficiency of Stenographers makes a world of difference to the efficient and expeditious discharge of the functions by the Judges. The Supreme Court, in terms, observed that the Private Secretaries to the Judges play an important role in taking down dictations and writing judgments, and, if merit is not given its due consideration and appointments are made on the basis of seniority, then it would be difficult for any Judge to discharge his obligation. There can be, thus, no duality of opinion on the point that the competency and efficiency of the Private Secretary is of vital significance and merit cannot be totally eschewed from consideration while making the appointment to the post of Private Secretary.

16. The historical perspective of creation of the posts of Personal Secretary and Private Secretary purportedly for removal of stagnation, does not justify an inference that promotion to the post of Private Secretary from the feeder cadre of Personal Assistant is to be made on the basis of seniority alone. If Rule 13 is so interpreted, the word ‘selection’ would then become otiose. The word ‘selection’ is impregnated with the concept of evaluation of relative merit for the purpose of appointment. Had the intention

been to promote the Personal Assistants on the basis of mere seniority, Rule 13 would have been differently worded, like by providing simply that “the appointment would be on the basis of seniority.”

17. The terms ‘eligible’, ‘suitable’, ‘fit for appointment’ and ‘selection’ have different connotations in service jurisprudence. Every expression has a definite juristic significance. They are not interchangeable. A profitable reference, in this context, can be made to a three Judge Bench judgment of the Supreme Court in the case of *Union of India & Ors. Vs. Lt. Gen. Rajendra Singh Kadyan & Anr.* ², wherein the challenge was to the selection of the officer, who was second in seniority to the post of Army Commander, Eastern Command. It was contended in the said case that the selection to the said post ought to be on the basis of seniority alone. The Supreme court considered the various criteria prescribed for selection and expounded the position in the following words :

“11Selection implies the right of rejection depending upon the criteria prescribed. Selection for promotion is based on different criteria depending

2 (2000) 6 SCC 698

upon the nature of the post and requirements of the service. Such criteria fall into three categories, namely,

1. Seniority cum fitness,
2. Seniority cum merit,
3. Merit cum suitability with due regard to seniority.

12 Wherever fitness is stipulated as the basis of selection, it is regarded as a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respects. Seniority cum merit postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of seniority cum fitness and seniority cum merit. Merit cum suitability with due regard to seniority as prescribed in the case of promotion to All India Services necessarily involves assessment of comparative merit of all eligible candidates, and selecting the best out of them.

....

20Further, the expression “fit” has been brought to our notice as legally meaning “fit to be chosen” by elaborating the expression “eligible” in Stroud’s Judicial Dictionary, 5th Edn. However, the expression “fit”, which has different shades of meanings, also means “a person to be appointed shall be legally eligible” and “eligible” has already been explained by us to mean “fit to be chosen”. Again, the expression “select” means “chosen or picked up”. Therefore, we are of the view that to the post of Army Commander, selection has to take place.....”

(emphasis supplied)

18. As regards, the submission on behalf of the petitioners that

there is not much difference in the duties discharged by the Personal Assistants and Private Secretaries and the appointment to the post of Private Secretary, if considered in the backdrop of the historical perspective of creation of the said posts for removal of stagnation, is an upgradation, it would be advantageous to make reference to the judgment of the Supreme Court in the case of ***Bharat Sanchar Nigam Limited Vs. R. Santhakumari Velusamy & Ors.***³, wherein after reference to the pronouncements, on the concepts of promotion and upgradation simplicitor, few principles were enunciated. The principles expounded in clauses (i) to (iv) of paragraph 29 are instructive and thus extracted below :-

21. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge :

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both - that is advancement to a higher position and advancement to a higher pay scale - are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

³ (2011) 9 SCC 510

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of

advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.”

(emphasis supplied)

19. In view of the aforesaid exposition of the legal position, the concepts of ‘promotion’ and ‘upgradation’ are distinct. Even when the process is said to be one of upgradation but it has an element of selection, it amounts to promotion. Conversely, mere elimination, on the basis of confidential reports and service record (as was sought to be urged on behalf of the petitioners as an alternative to shorthand test) may not amount to promotion. Thus, where an element of selection is involved, an inference is inescapable that the process is one of promotion.

20. It is also well neigh settled that what should be the criteria for the selection is a matter within the province of the appointing authority. The scope of judicial review in this regard is extremely

limited. The only aspect which the Court can consider is whether there is any rational nexus between the selection criteria and the duties and functions of the post for which the said criteria is prescribed. The Court cannot substitute its own value judgment for that of the appointing authority.

21. A useful reference, in this context, can be made to the judgment of the Supreme Court in the case of ***Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie & Ors.***⁴, wherein, the challenge was to the prescription of the qualification of Ph.D. for appointment to the post of Principal of the colleges run by the Union Territory Administration. Repelling the challenge, the Supreme Court outlined the contours of the judicial review in the matter of prescription of criteria for selection. Paragraph 22 reads as under :-

“22 It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. Courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the concerned authority so long as the qualifications prescribed by the employer is reasonably relevant and has a

4 (2011) 9 SCC 645

“rational nexus with the functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules. [See J. Rangaswamy vs. Government of Andhra Pradesh - 1990 (1) SCC 288 and P.U. Joshi vs. Accountant General - 2003 (2) SCC 632]. In the absence of any rules, under Article 309 or statute, the appellant had the power to appoint under its general power of administration and prescribe such eligibility criteria as it is considered to be necessary and reasonable.”

22. On the aforesaid touchstone, reverting to the facts of the instant case, it becomes evident that the Personal Assistants' suitability to the post of Private Secretary is to be adjudged on the basis of their proficiency in the basic skill of stenography. We are not persuaded to agree with the emotive appeal of Ms. Rajani Iyyer that the petitioners, who have put in number of years of service, are at a disadvantage when they compete with substantially junior and young Personal Assistants. It is not the case that the Personal Assistants are called upon to exhibit their skill in a new trade. Neither are they expected to acquire additional qualification nor to learn a new skill set. It is a common knowledge that practice ensures perfection in stenography, as in many other skills. The Personal Assistants, who have put in many years of service, on the contrary, ought to have the advantage of rich vocabulary which

they gained over a period of time. Thus, the submission that the Senior Personal Assistants are at a disadvantage as against the new entrants does not merit acceptance.

23. As indicated above, the proficiency in Stenography has an important bearing upon discharge of the duties by Private Secretaries. It cannot be gainsaid that the efficiency and proficiency have a defining functional nexus with the discharge of the duties by the Private Secretaries. Ultimately, inefficiency and unpolished skills of a Private Secretary would adversely affect the discharge of the functions by the Judges. Thus, we are not inclined to accede to the submission on behalf of the petitioners that the prescription of stenography/shorthand test has no rational nexus with duties attached to the post of Private Secretary.

24. To sum up, in our view, the prescription of the criteria of shorthand test emanates from the very concept of selection envisaged by Rule 13 of the Service Rules, 2000. Secondly, the second proviso to Rule 60 expressly saves the said criteria, which has been in operation since prior to the enforcement of the Rules.

Thirdly, on a balance, we find that the prescription of shorthand test is necessary for maintaining the efficiency in the administration of justice. Resultantly, the challenge raised in the instant petition is unworthy of countenance.

25. The petition, thus, stands dismissed.

No costs.

Rule stands discharged.

(N. J. JAMADAR, J.)

(RANJIT MORE, J.)