

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

Date of decision: 08.07.2019

CWP No.16334 of 2012 (O&M)

Anil Kumar ...Petitioner

Vs.

State of Haryana & others ...Respondents

CWP No.10108 of 2017 (O&M)

Jasmer Singh ...Petitioner

Vs.

State of Haryana & others ...Respondents

CWP No.28009 of 2017 (O&M)

Amarjit ...Petitioner

Vs.

State of Haryana & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: For the petitioners:

Mr. D.S.Patwalia, Senior Advocate, with
 Mr. Aalok Jagga, Advocate,
 in CWP No.16334 of 2012.
 Mr. J.S.Saini, Advocate,
 in CWP Nos.10108 of 2018 & 28009 of 2018.

For the State of Haryana:

Ms. Shruti Jain Goyal, DAG, Haryana.

For the private respondents:

Mr. Sanjay Kaushal, Senior Advocate, with
 Mr. Anurag Goyal, Advocate, for respondent No.4
 in CWP No.16334 of 2012.
 Mr. Anuj Balian, Advocate, for respondent No.4
 in CWP No.10108 of 2017.

Mr. Alankrit Bhardwaj & Mr. Namit Kumar, Advocates,
for respondent No.7 in CWP No.10108 of 2017.

RAJIV NARAIN RAINA, J.

1. This order shall dispose of the above captioned three writ petitions, as the issue involved in all the petitions is identical. However, for facility of reference the facts are taken from CWP No.16334 of 2012.

2. In the year 1994, the Subordinate Service Selection Board, Haryana (for short 'the Board') issued advertisement inviting applications from candidates for their selection and admission to the Patwar Training Course. On 29.07.1994, the Board recommended names of the successful candidates to the Director, Land Records, Haryana for Patwar Training of 1½ years' duration. On completion of training, the Director, Land Records recommended the names of the candidates on 05.05.1997 (P-1) to all the Deputy Commissioners of the State and Director Consolidation, Haryana for appointment as Patwaries. Candidates joined service allocated to different districts. The Collector, Jhajjar issued a letter dated 14.01.2009 (Annex P-3) by which the seniority list of Patwaris working in District Jhajjar as on 01.01.2009 was circulated and objections invited within 15 days. After resolving the objections, another tentative list was circulated vide letter dated 16.04.2009. Ultimately, on 31.10.2009, a final seniority list of Patwaris working in District Jhajjar was circulated placing the name of the petitioner junior to respondent No.4. Aggrieved by the seniority list dated 31.10.2009, an appeal was preferred before the Commissioner, Rohtak Division, Rohtak. However, during the pendency of the appeal before the Commissioner, an order dated 30.01.2012 was passed by which respondent No.4, namely, Subhash Chander was promoted as Kanungo. The Commissioner, Rohtak by

his order dated 30.05.2012 (Annex P-9) decided the appeal and remanded the matter back to Deputy Commissioner, Jhajjar directing him to prepare the final seniority list after affording an opportunity of hearing to all those patwaris whose seniority had been disturbed after issuing the tentative seniority list.

3. However, the District Collector, Jhajjar vide order dated 31.10.2012 dismissed the claim of the petitioner/s. The said order of the District Collector was challenged by the petitioner by filing CWP No.16334 of 2012 titled 'Anil Kumar Vs. State of Haryana & others'. During the pendency of the writ petition, the Commissioner, Rohtak Division, Rohtak by order dated 31.12.2012 allowed the appeal filed against the order of the Deputy Commissioner, Jhajjar and the matter was again remanded back to re-fix the seniority as per Haryana Land Records Manual, Rules 10(2), 10(3) and 11. Since the seniority list adverse to the interest of the petitioner was set aside by the Commissioner, Rohtak Division, Rohtak, the writ petition filed by the petitioner i.e. CWP No.16334 of 2012 was disposed of as having been rendered infructuous with liberty to the petitioner to revive the petition in case any grievance remains on account of the working of the seniority list adverse to the interest of the petitioner.

4. On the other hand, CWP No.1918 of 2013 and CWP No.3171 of 2014 questioning the validity of the order dated 31.12.2012 passed by the Commissioner, Rohtak Division, Rohtak was allowed by this Court on the ground that the Commissioner did not have the jurisdiction to entertain any appeal against the seniority list determined by the Deputy Commissioner. In appeal i.e. LPA No.989 of 2017 moved by the petitioner, he was granted

liberty to seek revival of CWP No.16334 of 2012 in which he had earlier challenged the seniority list. In pursuance of the liberty granted, the petitioner moved an application on the basis of which CWP No.16334 of 2012 was revived. That is the background in which this petition is taken up for final hearing.

5. The issue involved in the present writ petition is: Whether the seniority of Patwaris under the Haryana Revenue Patwaris (Group-C) Service Rules, 1981 (for short '1981 Rules') and the amended Rules, namely, Haryana Revenue Patwaris (Group-C) Service Rules, 2011 (for short '2011 Rules') shall be determined in the order of merit determined by the Haryana Subordinate Selection Board (Now Haryana Staff Selection Commission) or in accordance with the order in which the names of the candidates are recommended for appointment by the Director, Land Records, Haryana.

6. Before considering the arguments advanced on behalf of the respective parties, it is necessary to reproduce the relevant Rules i.e. Rules 9, 10, 11, 15 & 16 of the 1981 Rules to take the case forward. The same read as under:

“9. Method of recruitment – Recruitment to the Service shall be made –

- (a) in the case of Patwaris -
 - (i) by promotion from Assistant Patwaris; or
 - (ii) by direct recruitment; or
 - (iii) by transfer or deputation of an official already in the Service of any State Government or the Government of India; and

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10. (1) Patwar training – As and when a requisition is received by the Board from the Director, the Board shall recommend to the

Director such number of candidates for Patwar Training in a Patwar School as the Director may specify in the requisition.

(2) For the purpose of direct appointment to the Service a list of pass candidates shall be maintained by the Director in order of merit.

(3) As and when a requisition is received by the Director from the Collector, the Director shall recommend the names of the candidates for appointment to the Service.

11. Order in which recommendations are to be made from amongst Patwar pass candidates – Recommendations from amongst patwar pass candidates shall be made in the order in which their names appear in the merit list maintained by the Director.

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15. Seniority – Seniority, inter se of members of service shall be determined by the length of continuous service on any post in the Service:

Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre;

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the Board, shall not be disturbed in fixing the seniority;

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16. Seniority, inter se of the members of the Service shall be determined by the length of continuous service on any post in the Service;

Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre;

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority:”

7. Rule 9 of the 1981 Rules provides the mode of recruitment of Patwaris i.e. by direct recruitment or by transfer or deputation. Rule 10 provides that on a requisition received by the Board from the Director, Land Records, the Board shall recommend to the Director, the number of candidates for Patwar Training in a Patwar School, as the Director may

specify in the requisition for the purpose of direct appointment to the service.

A list of passed candidates shall be maintained by the Director in order of merit and as and when, a requisition is received by the Director from the names of the candidates for appointment to the service. Rule 11 prescribes that recommendation from amongst Patwar pass candidates shall be made in the order in which their names appear in the merit list maintained by the Director. Rule 15 provides for the basis on which the seniority shall be determined. This Rule prescribes that the seniority inter se of members of the service shall be determined by the length of continuous service on any post in the service. It further provides that in case of members appointed by direct recruitment, the order of merit determined by the Board shall not be disturbed in fixing the seniority.

8. The entire case of the petitioner rests upon Annexure P-1/ pp.49 of the writ paper-book. He contends that the seniority is to be determined in the order in which names were recommended by the Director, Land Records which would in fact be considered as the merit prepared by the Director, Land Records and this merit is to be taken into consideration for determining seniority under Rule 15, that is, on the basis of continuous length of service.

9. The Deputy Commissioner, Jhajjar had prepared the seniority list of the Patwaris taking into consideration the merit determined by the Board and continuous length of service as provided under Rule 15.

10. Vide an interim order dated 06.02.2019, this Court directed the Chief Secretary/ Additional Chief Secretary, Haryana in Revenue Department to disclose the stand of the State Government in the matter of determining seniority of Patwaris in the districts of Ambala with reference to the rules of

service; and, further to give justification for drawing seniority in Jhajjar District, not on the basis of final result but on the result of intermediate Course. In compliance of the aforesaid order, an affidavit dated 26.02.2019 was filed by the Addl. Chief Secretary and Financial Commissioner to Government of Haryana, Revenue and Disaster Management Department in Court stating that initially the Revenue Patwaris join as Trainee Patwaris as per recommendation of the Commission and after successful completion of 18 months training, they are appointed as Regular Patwaris. However, their inter se seniority is determined as per merit list of the Haryana Staff Selection Commission, Haryana. Thus, there is only one set of Rules/ Principles applicable in all the Districts for fixing the seniority of Patwaris.

11. Another affidavit dated 28.02.2019 was filed by the Additional Chief Secretary and Financial Commissioner to Government of Haryana, Revenue and Disaster Management Department for placing on record certain documents. The recommendation of the Board dated 24.08.1994 was placed on record as Annexure R-1/1. In Para 3 of the said letter, the candidates were recommended by the Board in the order of merit for admission to Patwar Training School. The 1st Column reads as “Merit No...”. Annexure R-1/2/1 is a letter sent by Director, Land Records to a candidate on 24.08.1994 informing him to take admission in the Patwar Training School as also informing him that he will be appointed as Patwari only on completion of Patwar Training, if post is vacant. Annexure R-1/3 is a letter of recommendation by the Director, Land Records dated 05.05.1997 (Annexure P-1). In the said letter, inadvertently, the merit determined by the Board was

not mentioned. Further, there is no column which would suggest that any merit of Patwar Examination was prepared by the Director, Land Records.

12. There is another letter of recommendation issued by Director, Land Records dated 22.10.2013 (Annexure R-1/4) wherein it was clearly mentioned that at the time of fixing of 'seniority', the merit list prepared by the Haryana Staff Selection Commission may not be disturbed.

13. In the Haryana Revenue Patwari (Group-C) Service Rules, 2011 (for short '2011 Rules') greater clarity has been brought in Rule 10 as per which the Patwar candidates recommended by the Commission for direct recruitment shall be given provisional appointment by the competent authority and thereafter, they shall undergo compulsory Patwar Training as specified in the rules. Sub Rule (4) further states that regular appointment shall be offered only after the successful completion of training and passing of the departmental examination. One such letter of provisional appointment is placed on record as Annexure R-1/2.

14. It is submitted that since the Patwar Training is only qualifying in nature, there is no occasion for Director, Land Records to prepare any merit list of the trainee Patwaris. It is only the merit determined by the Board or the Commission which is to be taken into consideration for the purpose of; firstly, determining the order in which the successful candidates are recommended by the Director, Land Records and then further for the purpose of determining inter se seniority of the Patwaris on the basis of continuous length of service.

15. Per contra, it is argued by Mr. D.S.Patwalia, learned senior counsel assisted by Mr. Aalok Jagga that the seniority has to be on the basis of merit prepared by the Director. This, if done, would be in consonance with

Rule 15 and it will be in consonance with seniority determined by length of service because appointment is made on the basis of this list. Whoever clears the test on the basis of merit attained in Patwar Training School, he is included in the List and on the basis of the same, appointment takes place and on the same basis the seniority is drawn by the State of Haryana.

16. It is argued that interpretation of the State is fallacious and unacceptable for the reason that it is contrary to the well-settled principle of law that seniority cannot be conferred upon an employee, when he was not even born in the cadre. Thus, seniority has to be reckoned only from the date when an employee enters into the cadre, when he starts earning salary and becomes the member of the service. Till such time as an employee is not born in the cadre, he cannot have any claim to seniority against others who are already in the cadre. The petitioner/s rely on the judgment in Ashok Kumar Srivastava Vs. Ram Lal, (2008) 3 SCC 148.

17. This Court by order dated 06.02.2019 directed the State of Haryana to file an affidavit explaining whether two set of principles have been followed in deciding the seniority of Patwaris, one in Jhajjar District and in the other Districts of the State of Haryana. No doubt, that affidavit has been referred to in the earlier part of the order, but it is submitted on behalf of the petitioner/s that it is nothing short of perjury, when it avers that inter se seniority is determined on the basis of merit prepared by the Commission (earlier known as the 'Board'). There is only one set of Rules/principles applicable in all the Districts for fixing seniority of Patwaris. The petitioner/s point out that only in District Jhajjar seniority is sought to be prepared on the basis of merit list of Board, while in all other Districts seniority is on the basis

of merit prepared by the Director on the basis of which appointments take place and seniority positions assigned. They refer to the practice in Districts Sonapat and Kurukshetra, where seniority based on merit list prepared by the Director prevailed.

18. Even assuming two different principles are being followed, even then the question is what is the Rule position and what does it mean when selection comes from the Board/Commission and successful candidates are sent to Patwar training for 1½ years without salary and on completion of the qualifying test, appointments come from the Director.

19. To begin with, the Director sends a requisition to the Board/Commission for selection of candidates. It shall recommend to the Director such number of candidates for patwar training in a patwari training school as may the Director specify in the requisition. The Director will maintain a list of “pass candidates”, which means those who have passed the patwar training. From this list, the Director will deploy candidates on requisition received from the Collector/s and names will be recommended to the different Collector/s for appointment. Rule 1 lays down the order in which the recommendations are made from amongst patwar pass candidates, which shall be made in the order in which their names appear in the merit list maintained by the Director. This merit list is the merit list sent by the Board/Commission. There is no provision in the Rules that at the time of patwar training, a competitive examination be held to determine inter se merit. I would, therefore, agree with the State that the patwar training is only of qualifying nature and would not change the order of merit determined by the Board/Commission. This view is sanctified by Rule 15, which deals with

seniority and provides that in case of members appointed by direct recruitment, the order of merit determined by the Board, shall not be disturbed in fixing the seniority. The direct recruitment has already taken place with the merit list prepared by the Board. Appointment is postponed to fulfill the condition of passing patwar training. Once that happens successfully, then after weeding out unsuccessful candidates, the final list would come into existence.

20. In case vacancy is available in a district, appointment can be made from the list without waiting for failed candidate to qualify patwar training and in case he does, he will be relegated in the seniority to the one earlier appointed. However, if a candidate has completed patwar training successfully, but vacancy is not available in the district, then in case batch-mate qualifies patwar training meanwhile, the seniority position determined by the Board shall remain unaltered and subsequent passing will have no effect in such a case.

21. The petitioner/s believe/s that merit list maintained by the Director under Rule 11 is the merit list which supersedes the merit list prepared by the Board. Rules 11 & 15 have to be read together in determining seniority, while Rule 11 speaks of merit list 'maintained' by the Director. The seniority Rule 15 in its second proviso mandates merit 'determined by the Board'. It thus becomes clear that merit determined by the Board is maintained by the Director to offer appointments from successful candidates who have completed patwar training. Therefore, the merit determined by the Board will prevail over all other considerations as far as seniority is

concerned. It is accordingly held that seniority of patwaris has to be maintained in terms of Rule 15 of the 1981 Rules.

22. It is no argument to advance that in this scenario seniority would count only from the date when patwar training candidates became members of the service without detracting from the settled principles on which the petitioner emphasize that no person can claim seniority over others, who are already in the cadre. There can be no dispute with the proposition in the judgments cited by Mr. Patwalia in Ashok Kumar Shrivastava & others Vs. Ram Lal & others, (2008) 3 SCC 148; Partap Singh Malik & another Vs. State of Haryana & others, 1995 (4) RSJ 873; Kuljit Paul Singh Mahi & others Vs. State of Punjab & others (CWP No.16073 of 2016 decided on 13.07.2018); Ashok Kumar Manju & others Vs. KCCB Limited & others, 2018 (3) PLR 750; State of Haryana & others Vs. Surindra Kumar Mishra & others, 2012 (1) RSJ 510; Sales Tax Commissioner etc. Vs. B.G.Patal etc. (2006) 1 SCC 615 and Haryana State Cooperative Land Development Bank Ltd. Vs. Haryana State Cooperative Land Development Bank Employees Union & another, (2004) 1 SCC 574. However, in none of those cases has the peculiar situation in this case arisen in the setting of the Rules been considered, where selection is followed by training without appointment and on successful completion of training, appointments are offered and on joining candidates become members of the service. As long as Rule 15 stands, there can be only one acceptable interpretation and the view expressed in the affidavit by the State appears to me to be in consonance with the Rule position and nothing said therein amounts to a falsity or suffers the vile of perjury. If there has been any aberration in the past in following the merit list

of the Director that would not alter the legal position when Rule 15 categorically mandates that merit determined by the Board shall not be disturbed. The Director only “maintains” that merit list and offers appointments from the successful names by weeding out those who fail to pass the patwar training in the first attempt with a right to appear again. If they qualify in subsequent chances, then the position is, as explained above, with consequential loss of seniority.

23. As a result of the discussion above, the verdict is that CWP No.16334 of 2012 fails and is dismissed with no order as to costs.

24. Now coming to the remaining two writ petitions i.e. CWP No.10108 of 2017 and CWP 28009 of 2017 wherein there is laid a challenge to the order dated 24.02.2016 passed by the Commissioner, Ambala Division, Ambala, it may be noticed that these petitions are covered by the decision rendered by this Court in CWP Nos.1918 of 2013 and CWP No.3171 of 2014 on 19.04.2017 setting aside the order passed by the Commissioner, Rohtak Division, Rohtak while observing that he has no power to entertain the appeal against the final seniority list of Patwaris in the absence of specific statutory provision allowing him to do so and therefore the Commissioner cannot exercise the power of appeal and decide the inter se seniority among the Patwaris. Though the petitioner in CWP No.16334 of 2012, namely, Anil Kumar, preferred an appeal i.e. LPA No.989 of 2017, but the appeal was disposed of with liberty to the appellant to seek revival of CWP No.16334 of 2012, which after hearing counsel stands dismissed today. However, the Division Bench has not expressed any views on the question of law as to

whether or not the Commissioner, Rohtak Division, Rohtak was competent to decide the seniority list.

25. Since the order passed by the learned Single Judge sustained, both the petitions (CWP Nos.10108 of 2017 and 28009 of 2017) are disposed of in terms of order dated 19.04.2017 (supra) and the order/s dated 24.02.2016 passed by the Commissioner, Ambala Division, Ambala are ordered to be set aside.

08.07.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*