

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

Date of Decision: October 16th, 2019

1. **CWP No.16207 of 2017**

Chhaju Ram

...Petitioner

Versus

Chaudhary Charan Singh, Haryana Agricultural University, Hisar & another

...Respondents

2. **CWP No.24569 of 2017**

Dharambir Singh

...Petitioner

Versus

Chaudhary Charan Singh, Haryana Agricultural University, Hisar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sunil K. Nehra, Advocate,
for the petitioner in CWP No.16207 of 2017.

Mr. Vivek Sheoran, Advocate,
for the petitioner in CWP No.24569 of 2017.

Mr. Vijay Singh, Advocate,
for the respondents/University.

AMIT RAWAL, J.

This order of mine shall dispose of two Civil Writ Petitions bearing No.16207 and 24569 of 2017 as the controversy involved is the same. The facts are being taken from CWP No.16207 of 2017.

Petitioner, vide appointment letter Annexure P-1, joined the respondent University in 1982 to the post of Assistant Draftsman (Civil).

After having rendered the service in pursuance to the appointment letter, he was promoted as Circle Head Draftsman.

The canon of attack apparently is on account of action of the respondents in framing the roster point which give more percentage of quota for promotion than the one prescribed in the jurisprudence. The employees of the Chaudhary Charan Singh, Haryana Agricultural University (for short, University), as per the averments in the writ petition, are governed by the Punjab Service of Engineers Class II P.W.D. (Building & Roads Branch), Rules, 1965 (for short, 1965 Rules, which have been adopted by the University after having been amended from time to time vide amendment Annexure P-5, whereby promotion to the post of Sub Divisional Engineer (SDE) under 100% quota and, thus, break provided but proportion is not being adhered to.

Mr. Sunil K. Nehra, learned counsel for the petitioner in CWP No.16207 of 2017 and Mr. Vivek Sheoran, learned counsel for the petitioner in CWP No.24569 of 2017 submitted that after the University had approved the rules by providing 8% quota for the cadre of the petitioners for promotion to the post of SDE, a detailed representation dated 15.06.2017 (Annexure P-6) was submitted to the Vice Chancellor of the University. Having failed to yield any result, petitioner approached this Court vide CWP No.14926 of 2017 and this Court vide order dated 13.07.2017 (Annexure P-7) disposed off the writ petition with a direction to the competent authority amongst the respondents to take a decision on the representation after affording opportunity of hearing within a period of three months and in case of rejection, detailed reasons be given by passing a speaking order. University was informed about the aforementioned

direction, but after few days of the order, vide impugned decision, Registrar of the University circulated the roster point for filling up the post of SDE (Civil) which is not in accordance with the settled law, for, it exceeds the prescribed quota. Against the existing 75% quota, they are already occupying 87.50% quota of SDE (Civil). As per the roster, first three (3) posts to be vacated by the present incumbents are to be filled up from the cadre of Junior Engineer (Civil) on the basis of seniority-cum-merit under 75% quota and by illustrating the aforementioned rules, it was pointed out that in case one post, which is vacant at present, is required to be filled up from the Junior Engineer (Civil) and, therefore, against the eight (8) sanctioned posts of SDE (Civil), persons from the cadre of Junior Engineer (Civil) would be occupying posts raising their reservation to 100% against 75% quota. Petitioner is due to retire on 31.12.2021 and till date, no person from the cadre of the petitioner, i.e., Draftsman and Tracer has been promoted as SDE (Civil).

Learned counsel for the petitioners further contended that the Haryana Government has come out with a gazette notification dated 11.02.2002 and 03.02.2004 of Haryana PWD B&R Department that the percentage has to be regularly maintained and short fall, if any, is required to be filled from the future vacancies. In this regard, reliance was also laid to the ratio decidendi culled out in **R.K.Sabarwal Versus State of Punjab, 1995(2) RSJ 895 (Paras 4 & 5).**

Mr. Vijay Singh, learned counsel for the respondents supported the impugned action of the respondents by submitting that the University did not, at any point of time, adopted the 1965 Rules as it is an autonomous body and had framed its own rules, i.e., Rules of 2017 (Annexure P-5). The

roster effectively assimilates fair representation of each cadre, which is reflected in the break-up of cadres entitled for promotion. First three (3) promotions were provided to 75% shareholding, whereas fourth (4th) promotion is given to the cadre having 14% shareholding and next three (3) promotions are given to 75% shareholding and the eighth (8th) promotion provides rotation between 8% and 3% one after the other and so on so forth. By dividing the aforementioned break-up, the University has maintained balance of interest between minority and majority stakeholders.

As regards the applicability of the judgment, it was stated that it pertained to adequate representation of backward classes such as SC/ST and other backward classes in State services. The sole purpose of the petitioner is to twist and sculpt the roster as he is due to retire on 31.12.2021. In fact, the University is an independent institution as per the Haryana and Punjab Agricultural Universities Act, 1970 and the rules/policies with regard to promotion to the post of SDE (Civil) are framed with the approval of Board of Management and the employees are governed under the rules/policies and, thus, urged this Court for dismissal of the writ petitions.

I have heard the learned counsel for the parties and appraised the paper book.

It would be in the fitness of things to extracts Paras 4 and 5 of the judgment in **R.K.Sabharwal's case (supra)**. The same read thus:-

“4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-

reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/Rules providing certain percentage of reservations for the backward classes are operative the same have to be followed. Despite any number of appointment/promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention

raised by the learned counsel and reject the same.

5. *We see considered force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts.....are reserved for members of the Scheduled Caste and Backward Classes. In a lot of 100 posts those falling at serial numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Caste. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards upto 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in 357 a cadre of 100 posts when the posts earmarked*

in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State services and is consistent with the demographic estimate based on the proportion worked out in relation to their populations. The numerical quota of posts is not shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/ promotees occupy the posts meant for them in the roster. The operation of the roster and the running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at Roster - points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled

Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category By following this procedure they shall neither be short-fall nor excess in the percentage of reservation.”

On perusal of the aforementioned judgment, the Hon'ble Supreme Court while dealing with the question of non-reservation of a particular class, held that the implementation of the roster point is like a running account from year to year which will operate till the quota is exhausted and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive.

The argument of Mr. Nehra of adoption of 1965 Rules by the University by causing an amendment, would not have any force, for, the amendment caused was on account of the decision of the Board of Management in the meeting held on 07.02.2017, whereby Vice Chancellor of the University pleased to amend the provisions in clause 5(3) of Chapter VIII of the University Act and Statute and not of 1965 Rules. Though for fixing the quota, the proportion break-up was gained to some extent, familiar to the Haryana PWD & B.R. Department, but that would mean it is a clear cut copy. The existing proportion was approved in the decision dated 16.02.2017 (Annexure P-5). The same reads thus:-

“ *NOTIFICATION*
Amendment No.1/2017

No.Admn.E.3/2017

Dated:

In pursuance of the decision taken by the Board of Management vide Item No.B-2 and B-13 in its 255th meeting held on 07.02.2017, the Vice-Chancellor, CCS HAU, Hisar is

pleased to amend the provision contained under Clause-5(3) of Chapter-VIII of the CCS HAU Act & Statutes as under:-

Existing provision	Proposed provision
All the posts in the non-ministerial cadre in Class-II/Grade 'B' posts shall be filled by promotion provided the departmental persons fulfill the qualifications and experience prescribed for the post. If suitable candidates are not available for promotion, vacancies may be filled by direct recruitment.	All the posts in the non-ministerial cadre in Class-II/Grade 'B' posts shall be filled by promotion provided the departmental persons fulfill the qualifications and experience prescribed for the post. If suitable candidates are not available for promotion, vacancies may be filled by direct recruitment. For promotion to the post of Sub-Divisional Engineer under 100% quota, the break up will be in the following proportion:- A. From Junior Engineer Cadre on the basis of seniority-cum-merit. 75% B. Remaining 25% may be distributed as under on seniority-cum-merit:- (keeping in view the policy of Haryana PWD B&R Department and proposed proportionately against remaining 25%) i) From Draftsman & Tracer Cadre= 8% ii) From Junior Engineer Cadre possessing qualification prescribed by the Haryana Govt. i.e. BE/B.Tech. Or AMIE)= 14% iii) From Draftsman and Tracers Cadre possessing qualification prescribed by the Haryana Govt. i.e. BE/B.Tech or AMIE)= 3% The recruitment policy from School Teacher to School Lecturer on the pattern of State Govt.Haryana is as under:- i) By direct recruitment= 67% ii) By promotion 33

2. In pursuance of the above decision taken by the BOM vide Item No.B-13, the Vice-Chancellor is pleased to adopt the Notification of Haryana Govt.dated 11.04.2012 (copy enclosed) in CCS HAU for promotion to the post of School Lecturer and all the 16 sanctioned posts of School Lecturers are categorized subject-wise keeping in view the subject to be taught in 10+1 and 10+2 including IX and X classes. The

distribution of 13 posts subject-wise is as under:-

i)	English	3
ii)	Mathematics	2
iii)	Physics	3
iv)	Chemistry	2
v)	Biology	2
vi)	Music	1

3. Three posts i.e. Political Science/History, Sociology and Accountancy & Business Studies is kept in abeyance since these 3 posts of School Lecturers have already been filled up through recruitment/promotion and these posts will be converted as and when these fall vacant in future as under:-

i)	Mathematics	1
ii)	Physics	1
iii)	Chemistry	1

Sd/-

(Dr.M.S.Dahiya)

Registrar

Endst.No.Admn.E.3/2017/3557-3676 dated 16.02.2017

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xxx”

The impugned roster point culled out the promotion to the post of SDE under 100% quota given by the department as is follows:-

2. The Vice-Chancellor has approved the following roster for filling up the posts of Sub-Divisional Engineer (Civil) through promotion:-

i)	<i>The present provision approved by BOM is implemented from the date of decision of Board of Management i.e. 07.02.2017.</i>
ii)	<i>First three posts (1,2,3) to be vacated by present incumbents may be filled up from Category-A as mentioned under Para-1 that is Junior Engineer Cadre (Civil) on the basis of seniority-cum-merit under 75% quota.</i>
iii)	<i>Next fourth (04) post to be vacated by present incumbents may be filled up (under 25% quota) from Category-B (ii) as mentioned under Para-1 (under 14% quota) that is Junior Engineer (Civil) cadre possessing qualification prescribed by the Haryana Govt. i.e. BE/B.Tech or AMIE.</i>
iv)	<i>Next 5,6, 7 posts to be vacated by present incumbents may be filled up from Category-A as mentioned under Para-1 that is Junior Engineer (Civil) Cadre on the basis of seniority-cum-merit under 75% quota.</i>
v)	<i>Next eight (08) post to be vacated by present incumbent may be filled up (under 25% quota) from Category-B(i), as mentioned under Para-1 (under 8% quota) that is Draftsman & Tracer Cadre. Thereafter post vacated by Category6-B (i) as mentioned under Para-1 may be filled up from the Draftsman & Tracer Cadre B (iii) as mentioned under Para-1 (Being 3% quota) possessing qualification prescribed by the Haryana Govt. i.e. BE/B/Tech. or AMIE). Future vacancy {(post vacated either Category-B(i) or B (iii)} may be filled up by rotation from Category-B (i) or B(iii) as mentioned under Para-1.</i>
vi)	<i>Once the promotional quota approved by the Board of Management is completed, the subsequent vacancie3s may be filled up from the same cadre from whom the post is vacated.</i>

Note:- However, the above procedure may also be

applied in the remaining posts of SDEs (if any) to maintain consistency with the provisions contained in the Act and Status.

Sd/-

17.07.2017

Registrar”

On plain and simple reading of the aforementioned proportion, it is clear that there is no defiance of any rules which would give any cause to the petitioner to challenge. The apprehension expressed is that the petitioner is due to retire in December, 2021 as he may not be able to achieve that point in the roster, but under the aforementioned garb, cannot be permitted to seek indulgence of this Court under the judicial review by invoking extraordinary jurisdiction of this Court as scope is very limited unless and until the decision making process suffers from a fallacy, perversity or irrationality or surpasses test of reasonability.

On juxta-position of the rules and the roster point, I am of the view that there is hardly any possibility of intervention in accepting contention that the reservation exceeded the quota. No such example or any orders of promotion have been placed on record. The whole purpose of the roster is to fill up the vacancies strictly in accordance with the roster, i.e., first three posts (1, 2 & 3) are to be filled from the Junior Engineer (Civil) on the basis of the seniority-cum-merit under 75% quota, 4th under 14% quota from Junior Engineer (Civil) possessing BE/ B.Tech. or AMIE, 5th, 6th and 7th from Junior Engineer (Civil) on the basis of the seniority-cum-merit under 75% quota and 8th to be filled from Draftsman & Tracer Cadre under 8% quota and thereafter the post vacated by the personnel to be filled from the Draftsman and Tracer Cadre possessing qualification as prescribed by the Haryana Government, i.e., BE/B.Tech or AIME. In such circumstances,

the department intended to achieve the full circle of the process.

No ground for interference is made out. Writ petitions are accordingly dismissed.

October 16th, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No