

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

1. CWP No. 22557 of 2019
Maninder and others ...Petitioners
Versus
Punjab and Haryana High Court at Chandigarh and
another ...Respondents
2. CWP No. 22559 of 2019
Mehak Huria and others ...Petitioners
Versus
Punjab and Haryana High Court at Chandigarh and
another ...Respondents

Date of Decision: 26.8.2019

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

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. G. S. Sandhu, Advocate for the petitioners

RAJIV NARAIN RAINA, J. (Oral)

1. This order will dispose of CWP Nos. 22557 and 22559 of 2019 as common questions of law and fact are involved in both the writ petitions. For the sake of convenience, the facts and documents are taken from CWP No. 22557 of 2019.
2. The petitioners belong to the Stenography line working in the establishment of this Court. They were directly recruited as Stenotypists and promoted as Sr. Scale Stenographers. Sr. Scale Stenographers are promoted to the post of Judgment Writers on merit-cum-seniority within 50% quota.
3. Appointment and promotion to the post of Judgment Writers is governed by Rule 11 (1) (b) of the High Court Establishment (Conditions and Appointment of Service) Rules, 1973 (for short "1973 Rules") which proviso reads as follows:-

“11. (1) Appointment to the post of Judgement Writers shall be made from the following sources:-

a) Fifty percent posts of Judgement Writers shall be filled in by way of competitive examination from open market, subject to following conditions:-

(i) No person shall be eligible for direct recruitment to the service if he/she is less than 21 years or more than 30 years of age.

However, upper age limit will be relaxed up to 10 years for the candidates who are already working in Government departments/Semi Government departments /Corporations/Boards.

(ii)The candidate should be at least Graduate or equivalent thereto of a recognized university

(iii)The candidate should have proficiency in operation of Computers (Word Processing and Spread Sheets).

(iv)The candidate shall have to pass the test in English Shorthand at a speed of 120 W.P.M. and its transcription at 24 W.P.M. The test shall be of at least 10 minutes duration. No candidate shall be considered to have qualified the test, if he / she commits more than 5% mistakes. The list of qualified candidates shall remain valid for a period of one year from the date of examination and shall lapse thereafter.

b) Fifty percent posts shall be filled in by promotion from amongst the Senior Scale Stenographers, having worked as such for a minimum period of 2 years in the High Court, on the basis of merit-cum Seniority, and further subject to the following conditions :-

(i) Selected candidate should be at least Graduate or equivalent thereto of a recognized university.

(ii) The candidate should have proficiency in operation of Computers (Word Processing and Spread Sheets).”

4. Direct appointment is on the basis of competitive examination from open merit as Rule 11(1) prescribes while sub rule (b) of 1973 Rules provides that 50% shall be filled in by promotion from amongst graduate Sr. Scale Stenographers having put in minimum period of two years in the High Court. The mode of promotion is merit-cum-seniority. Merit takes precedent over seniority. Even in the promotion rule, the word “selected candidate” is employed and candidate must have proficiency in operation of computers. It is not a pure promotional post based on seniority alone. On the other hand language supports the conclusion that the promotee quota will be filled in by selection/merit. How merit is to be determined is not spelt out in Rule 11 (1)(b). The Hon’ble Departmental Promotion and Recruitment Committee (High Court) comprising of Hon’ble Judges on the administrative side held a meeting on 26.10.2017 for consideration of a joint representation dated 9.8.2017 submitted by Ms. Sheetal Gawri, Sr. Scale Stenographer and 9 other fellow Sr. Scale Stenographers for considering them for promotion to the posts of Judgment Writer from the due dates. Twenty senior most Sr. Scale Stenographers were recommended for promotion as they completed two years of service as Sr. Scale Stenographers. The Committee perused their service records and made recommendations. I am told that these officials have been promoted to the higher post with the recommendation accepted.

5. The Hon’ble Committee again met on 9.4.2019 for considering filling up 20 vacant posts of Judgment Writers from amongst eligible Sr. Scale Stenographers when a decision was taken to introduce a common short-hand/typing test to test their practical performance. In short, promotions would be based only by subjecting

the candidates to a test and mere seniority alone would not account for promotion. The Committee again met on 9.5.2019 and recommended that a stenography test of all the 33 eligible candidates be conducted with a minimum typing speed as already prescribed in Rule 11 on 27th May, 2019 at 4.30 PM in the High Court Museum.

6. Aggrieved by the recommendation of the Committee, representations dated 15/16.5.2019 and 10.7.2019 were submitted by 30 Sr. Scale Stenographers in two groups requesting promotion to the post of Judgment Writers on the principle of equality, parity and justice as well as in numerous past precedents. The Committee considered the representations and it was unanimously resolved to reject them as per the following decision:-

“In view of prescribed principle of merit-cum-seniority, the decision dated 9.5.2019 of the Committee taken previously for conducting stenography test is most appropriate to determine suitability of the candidates keeping in view the job’s requirement. Accordingly, the request of representationists for not conducting stenography test is rejected.”

7. The Committee approved the recommendations dated 9.5.2019 as the most appropriate method to determine suitability of the candidates keeping in view the requirements of the job. The representations were declined on 22.7.2019.

8. Against the dismissal of the representations, the petitioners have approached this Court by way of these two petitions. It is contended by the learned Senior Counsel for the petitioners that Rule 11 is clear when it prescribes that 50% posts of Judgment Writers shall be filled in by direct recruitment by conducting a test in English

Shorthand at a speed of 120 W.P.M. and its transcription at 24 W.P.M. whereas 50% posts shall be filled in by promotion from amongst the Senior Scale Stenographers, having worked as such for a minimum period of 2 years in the High Court, on the basis of merit-cum Seniority. But no such Shorthand Test is laid down for the promotee quota candidates. In past precedents until the year 2017, promotions were made on the basis of service record and this new chapter in recruitment has come only in the year 2019. The decision to introduce a test, they say, is in violation of the equal protection clause as enshrined in Article 14 and the equal opportunity principle in Article 16 of the Constitution of India. In case the petitioners fail to pass the test, they will be superseded by successful candidates and this situation is not foretold or predicted in Rule 11 (1) (b). They have been taken by surprise to their detriment. The ACRs of the petitioners prove the fact that their work has always been satisfactory without there being any adverse remarks recorded of their work and conduct. It is urged that the petitioners were direct recruits as Steno Typist in terms of Rule 19-A of the Rules of 1973 which prescribes an entrance test with 80 words per minute speed in English Shorthand and 20 words per minute in transcription of the same. They have completed minimum experience of two years and are eligible for promotion and the imposition of the test for further promotion is unsustainable in the eyes of law as it changes their conditions of service arbitrarily and without notice or hearing.

9. Mr.Akshay Bhan, learned Senior Counsel refers to Rule 24 of the 1973 Rules to submit that there is contravention of it. Rule 24 reads as follows:-

“24. Promotion in the High Court Establishment from one grade to the next higher one shall except in cases where competitive examination is prescribed, be by selection and no one shall have a right to claim promotion.

Service record of the Officers/Officials for preceding 5 years shall be taken into consideration except for the posts for which a specific criteria for promotion is laid down.

The Officers/Officials should have earned at least three 'Good' reports in his ACRs in last 5 years without any entry of 'doubtful integrity' for a period of 10 years preceding the month of consideration for promotion.”

10. In view of the said Rule, the promotions are to be made by non-selection as no competitive examination has been prescribed for promotee quota. Furthermore, the said rule also prescribes that service record is to be taken in consideration except for the post for which a specific criteria for promotion is laid down, as is the case in the rules of service. The ACRs of the petitioners provide an assessment of performance of the petitioners as Sr. Scale Stenographers. The issue raised is whether the respondents have acted illegally or against the rules framed by the High Court for promotion to the post of Judgment Writers.

11. I have considered the submissions advanced by the learned Sr. Counsel and perused the paper-book and the rules involved.

12. To start with, no rule is impermeable. It is subject to change and alteration to meet the need of the hour. So long as an administrative decision is not contrary to rule or in abrogation of it, it is widely acceptable as supplemental to Rule and not aimed to supplant it.

The introduction of the common test in Shorthand/typing test for promotion is supplemental to the rule. The impugned decisions are in the nature of executive instructions and are made eminently to fill in the gaps in the rules and the present felt requirements of the job. In an ever increasing workload upon the High Court, the place of Stenographers is vital to the existence of the High Court as an institution in both administrative and judicial work. The suitability is to be determined on the touchstone of merit-cum-seniority and not seniority-cum-merit. The principles of seniority-cum-merit and the reverse in service jurisprudence are well known. Merit is predominant and seniority is subordinate. In other words, 'merit-cum-seniority' lays greater emphasis on merit and ability and seniority plays a less significant role. The way in which merit is to be determined is not defined in Rule 11 (1) (b) and that is what has apparently prompted the authority to fill in the gaps by the impugned decisions of the Hon'ble Committee. The decision to put the petitioners to a test may be hybrid solution to chose the most efficient to discharge with ability the duties and responsibilities of the higher post but is not illegal or unjustified as a new-deal policy. It has become a rampant notion among the sloths and the malingerers that promotion only means easy access to higher salary viewed as an automatic birthright. To break this cacoon butterflies will not fly out. The transformation comes with pain and fear of being passed over to merit but it will secure in some measure the future of the institution that the best stenographers of keenest competitive talent go up the ladder of promotion and success strengthening human resources for

years to come. This I believe is the philosophy of the decisions taken in 2019.

13. I have, therefore, no doubt in my mind that both the writ petitions are misconceived and deserve not to be entertained in exercise of writ jurisdiction under Article 226 of the Constitution of India. There is no error or arbitrariness, unconstitutionality, discrimination and illegality in the impugned decisions of the Hon'ble Committee. Merely because past precedents have been departed from is not a valid ground to upset the impugned decisions and invoke the writ jurisdiction of this Court. No one has an indefeasible right to promotion nor are chances justiciable. Their right to promotion exists but it stands pruned by a test of merit. Merit must prevail if public interest is to be wholesomely served.

14. For the foregoing reasons, I find no merit in both the writ petitions and the same are dismissed *in limine*.

26.8.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes/No