

Sr. No.213

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.1844 of 2013 (O&M)

Reserved on : 16.07.2019
Pronounced on :13.08.2019

Smt. Shallu

... Petitioner

Versus

U.T. Chandigarh Administration and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. D.S.Sobti, Advocate,
for the petitioner.

Mr. Arvind Rajotia, Advocate,
for UT, Chandigarh.

Ms. Deepali Puri, Advocate,
for respondent No.2.

Mr. J.R.Syal, Advocate,
for respondents No.3 and 4.

Ms. Kanika Toor, Advocate for
Mr. Ranjivan Singh, Advocate,
for respondent No.5.

ARUN MONGA, J.

1. Challenge herein is to the promotion order dated 02.08.2012 (Annexure P-5) whereby, claim of the petitioner has been ignored and her juniors i.e. respondents No.3 and 4 have been promoted to the post of Senior Scale Stenographer, notwithstanding, that the petitioner is the senior most Steno Typist in the Feeder Cadre.

2. It is stated that there are 7 sanctioned posts of Senior Scale Stenographers and at the time of filing the writ petition, there were 4 vacant

posts, out of which only 3 were reserved for General Category as per the applicable Regulations which came into effect with effect from 17.05.2012 (Annexure P-2). All these vacancies were to be filled up by 100% promotion from amongst the Steno Typists. The relevant part of the Regulations, *ibid* is reproduced hereinbelow:-

“10. Seniority:- The Seniority of members of service shall be determined in accordance with the instructions applicable to the employees of the Chandigarh Administration issued from time to time.”

3. Respondent No.2 i.e. Municipal Corporation ostensibly in compliance of the above Regulations has evolved a criteria which is not only confusing but also is complicated, resulting in the grievance of the petitioner on having been overlooked/rejected for the promotion despite being the most eligible and senior most Steno Typist as claimed the petitioner.

4. The Corporation itself vide its letter dated 19.03.2018 (Annexure P-12) conveyed that a stenography test would be held from amongst the eligible Steno Typists for filling up of two posts of Senior Scale Stenographers. Despite the fact that the petitioner had already undertaken a similar test conducted on 23.07.2012. Pursuant thereto, she was amongst one of the 5 candidates who were held eligible against 7 posts of Senior Scale Stenographers. Thereafter, on the basis of said test of the year 2012, Departmental Promotions Committee (DPC) was conducted. Only two candidates were recommended for promotion to the post of Senior Scale Stenographers vide order dated 02.08.2012 (Annexure P-5). As regards the other promotions, the DPC sought clarification from UT

Administration whether Punjab Government Instructions dated 23.12.1995/18.01.1996 (Annexure P-2/A) were applicable to the Municipal Corporation or not. Consideration of the case of the petitioner for promotion was, therefore, put on hold to await the said clarification. Subsequently, vide letter dated 11.07.2013 (Annexure P-10) the Joint Secretary, Department of Local Government, Chandigarh stated for the first time that the criteria for the mistakes committed in the stenography test shall be on the same lines as per the provisions of High Court Establishment (Appointment and Conditions of Service) Rules, 1973.

5. The petitioner states that the said Instructions/letter dated 11.07.2013 (Annexure P-10) are not tenable in law. The High Court Rules have never been adopted by the Municipal Corporation. The petitioner also sought information under Right to Information Act. RTI information/clarification, regarding number of mistakes allowed for promotion, was given as per letter dated 24.12.2013 (Annexure P-13 colly.). Petitioner seeks parity on the same lines. The petitioner states that on the basis of Administrative Instructions dated 24.12.2013 (Annexure P-13 colly.), which formed the basis of information provided under RTI (P-13 colly.), another Steno Typist i.e. Preetinder Kaur who is junior to the petitioner also approached this Court vide CWP No.20408 of 2014. Pursuant to a judgment dated 16.01.2017 rendered by a coordinate Bench of this Court she was granted promotion. The petitioner states that her case is squarely covered by the said judgment as she also took the same stenography test as Preetinder Kaur and being the senior most candidate as per the Seniority list dated 12.10.2012 (Annexure P-11) applicable at the

relevant time, her case is on better footing than Preetinder Kaur and she is entitled to be considered for promotion.

6. In the return filed by the contesting respondent/Municipal Corporation, the claim of the petitioner has been resisted on the ground that Municipal Corporation has its own Service Regulations, namely, Municipal Corporation, Chandigarh Service Regulations, 2012. The qualification laid down in Government of Punjab Circular, dated 18.01.1996 as relied upon by the petitioner is not applicable to the employees of the Municipal Corporation. As per the Regulations, 2012, *ibid*, the criteria for promotion to the post of Senior Scale Stenographer is “100% by promotion failing which by deputation”. It is further stated that a candidate has to qualify the departmental stenography test at the speed of 120 words per minute and transcript speed of 30 words per minute. Accordingly, the Municipal Corporation has already promoted the two suitable candidates Surinder Kaur and Neeraj whose mistakes were less than 4%.

7. Since the authority conducting the test, preparing and submitting the result of the test mentioned the number of mistakes which were committed by the candidates, as such an issue arose as to how many mistakes were allowed to qualify the test. Upon receipt of a representation from one of the candidates, vide letter dated 03.10.2012, the Municipal Corporation requested the Secretary, Local Government, U.T., Chandigarh to clarify with regard to the percentage of mistakes. The same was responded vide letter dated 11.07.2013 (Annexure R-2) conveying that after consultation with the Department of Personnel, it has been decided that as per High Court Rules, 1973, candidates whose mistakes are less than 5%

may be promoted. As regards, the performance of the petitioner, it has been stated that she had 42 mistakes as such was rightly not promoted as against the lesser mistakes of Neeraj and Surinder Kaur which were 8 and 14 respectively and, therefore, they have been rightly promoted.

8. I have heard learned counsel appearing for the respective parties and have gone through the rival pleadings with their assistance.

9. As per Municipal Corporation Regulations 2012, the DPC was under a legal obligation to necessarily recommend filling up of all the vacancies as per the said Regulations which envisage the following terms:-

I) non-selection post

II) 100% by promotion.

III) Seniority cum merit

IV) Subject to qualifying the departmental test at the speed of 120 words per minute in Stenography (English).

10. Apart from the above four, the Regulations nowhere prescribed the percentage of mistakes. Regardless in the test conducted on 23.07.2012, 7 persons appeared including the petitioner and 5 were declared eligible (Annexure P-4). As per Regulations, from amongst, 5 declared eligible candidates, the DPC ought to have filled up vacant seats on seniority-cum-merit basis.

11. In my opinion, the word eligible in the context of selection of a candidate is synonymous with the word qualified and the same is to be read in the context of Seniority-cum-merit (eligible/qualified).

12. It is not the case of the respondents that the DPC has been declaring the candidates in the test as qualified or disqualified. It is safe to

hold that the stenography test, seen in the context of seniority, is the criteria adopted by the DPC for determining the eligibility of a candidate vis-a-vis his/her seniority. Seen from that context, while on one hand, Chandigarh Administration stated (Annexure P-10) that Circular dated 18.01.1996 of the Punjab Government relied upon by DPC had not been adopted by it, yet the DPC vide its recommendation (Annexure P-4) without any cogent reasons, out of the blue relied upon by the said Circular and stated that only the candidates who committed less than 4% mistakes shall be held eligible/qualified to be promoted (as per their seniority). Also to be noted that while giving the clarification (Annexure P-10), Chandigarh Administration stated that High Court Establishment (Appointment and Conditions of Service) Rules, 1973 would apply instead of Punjab Government Circular. Later on Chandigarh Administration vide its order/letter dated 24.12.2013 (Annexure P-13) once again clarified that even the High Court Rules were not adopted and, therefore, cannot be made applicable, but also categorically stated that the High Court Rules are completely silent on the percentage of mistakes. In the overall scenario, be it the Punjab Government Circular and/or the High Court Rules, in view of the conflicting stand of the Chandigarh Administration it, thus, emerges that the petitioner was eligible for promotion on the basis of the stenography test conducted on 23.07.2012 for the following 3 reasons:-

- a) Municipal Corporation, Chandigarh Service Regulations, 2012 are silent on percentage of mistakes allowed.
- b) As per Municipal Corporation Regulations, petitioner is/was qualified/eligible for promotion.

c) At the relevant time, neither Punjab Government Circular nor High Court Establishment Rules were adopted by Municipal Corporation.

13. Apart from the above, it was only in the year 2016, when the Municipal Corporation framed its new Rules, whereby 5% mistakes were allowed in the stenography test for determining the eligibility/qualification for promotion to the post of Senior Scale Stenographer.

14. In the present case, qua the old vacancies, old Rules would apply and the old Rules are silent, with respect to the mistakes. For the DPC to thus say that only less than 4% mistakes were allowed and the petitioner having committed 7% mistakes was disqualified/held ineligible and therefore, not entitled to promotion would be unreasonable particularly, in view of the fact that the petitioner was the senior most eligible candidate.

15. Otherwise also, comparing the Punjab Government Rules and the High Court Establishment Rules with the Municipal Corporation, Chandigarh Rules/Regulations would be like comparing apples with oranges. The posts are completely different, the levels of tests are completely different, the duration of the test are also different, the requirements are also totally different and there cannot be selective and piece meal adoption of Rule while ignoring other pre-requisites of the same Rule. The relevant parameters of the Punjab Government Rules, the High Court Establishment Rules and the Municipal Corporation Rules are as shown in the chart below:-

Sr. No.	Punjab Government Rules	High Court Establishment Rules	M.C.Chandigarh Rules
1.	Post-Stenographer	Post-Judgment Writer	Post-Stenographer

2.	Speed: 60 words per minute	Speed: 120 words per minute	Speed: 120 words per minute
3.	Duration of dictation:5 mins	Duration of dictation: 10 mins	Duration of dictation:5 mins.
4.	Mistakes:4 % allowed	Mistakes:5% allowed	silent

16. The Hon'ble Supreme Court in ***Y.V.Rangaiah and others Vs. J. Sreenivasa Rao, (1983) 3 Supreme Court Cases 284***, in paragraph No.9 has held as follows:-

“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

17. Further the Hon'ble Supreme Court in ***Union of India and***

another Vs. Hemraj Singh Chauhan and others, (2010) 4 Supreme Court Cases 290 has held categorically that promotion is virtually a part of a fundamental right guaranteed under Article 16 of the Constitution of India and the guarantee of fair consideration in a matter of promotion under Article 16 of the Constitution of India virtually flows from guarantee of equality under Article 14 of the Constitution of India. In the said judgment in paragraph Nos.38, 39 and 40 the Hon'ble Supreme Court has held as follows:-

“38. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under [Article 16](#) of the Constitution. The guarantee of a fair consideration in matters of promotion under [Article 16](#) virtually flows from guarantee of equality under [Article 14](#) of the Constitution.

39. [In The Manager, Government Branch Press and Anr. vs. D.B. Belliappa](#) - (1979) 1 SCC 477, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomized under Articles 14 and 16 is "fairness founded on reason" (See para 24 page 486).

40. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration....”

18. All the said judgments have been relied upon by this Court in

CWP No.7293 of 2015 titled as ***Ram Pal Verma Vs. The State of Punjab***

and others, decided on 17.05.2018, wherein the promotion which was delayed and the delay was not attributable to the petitioner, he was deemed to be promoted from the date on which he became eligible for such promotion.

19. The conceded position herein, as per the stand taken by the Municipal Corporation, is that there was an anomaly in the applicable service Regulations, 2012 in as much as it did not specify number of mistakes. In the circumstances, clarifications were sought from Chandigarh Administration which vide its letter dated 24.12.2013 (Annexure R-9) allowed the Corporation to follow past practice till such time new set of instructions/Rules on this issue was adopted by MC. The matter was later taken up by in 229th meeting of General House of the Corporation whereby it was approved that only 5% mistakes would be permissible. The matter is still pending before the Committee of the Municipal Corporation for reviewing the entire Service Regulations and the proposed amendment is yet to take place. It is thus, clear that the Municipal Corporation does not have its own prescribed criteria with respect to the mistakes and, therefore, the candidates were not aware as to what is the determining factor/criteria in the qualifying Stenography Test so as to be held eligible/qualified after taking the same.

20. The DPC adopted the criteria of 4% mistakes without the knowledge of the candidates and without having proper sanction from the Municipal Corporation. The candid stand of the Municipal Corporation is that it has not adopted the Punjab Government Circular as has been stated hereinbefore.

21. In somewhat similar circumstances, another candidate i.e. Preetinder Kaur approached this Court vide CWP No.20408 of 2014 which was decided on 16.01.2017 wherein the stand of the Corporation was that petitioner had committed 5% mistakes which are more than what the DPC had prescribed i.e. 4% and, therefore, was not entitled to be considered for promotion. My learned senior brother Ajay Tewari, J. while disposing of the writ petition also expressed his opinion that Chandigarh Administration Rules are silent with respect to the number of mistakes, therefore, the petitioner was entitled to the benefit of mistakes committed beyond 4 %. The relevant part of judgment is extracted hereinbelow:-

“In my opinion, the argument of the learned counsel for the petitioner have to prevail. The Selection Committee at the time of selection recognized that there was an anomaly and referred the matter for clarification with the explicit stipulation that in case the clarification came in favour of the petitioner she would be entitled for promotion from the same date and it does not now lie in the mouth of the respondents to completely erode the effect thereof in view of the clarification mentioned above.

In these circumstances, this petition is allowed and the respondents are directed to consider the claim of the petitioner for promotion as Senior Scale Stenographer with effect from the date of the order of promotion of Neeraj and Surinder Kaur after considering her to have qualified in the type test.”

22. I am of the opinion that the action of the official respondents is not sustainable in law. Accordingly, the petition is allowed and the respondents are directed to consider the claim of the petitioner for promotion as Senior Scale Stenographer with effect from the date of the

other candidates who were promoted pursuant to the DPC conducted by considering her eligible/qualified in the stenography test by giving her benefit of her seniority.

23. Let necessary exercise be conducted within a period of two months from the date of receipt of a certified copy of this order.

24. In case petitioner's claim is accepted, she would be entitled to all consequential benefits (inter se seniority) except the increased salary for the period she has not worked as Senior Scale Stenographer.

13.08.2019
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No