

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

CWP No. 13249 of 2018
Date of decision: 10.02.2020

Achal Bisht

.....Petitioner

V/s.

**Chandigarh Institute of Hotel Management & Catering Technology
and another**

.....Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Raman Sharma, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Advocate,
for the respondents.

Sanjay Kumar, J.

The petitioner, an Assistant Lecturer-cum-Assistant Instructor in the service of the Chandigarh Institute of Hotel Management and Catering Technology, Chandigarh (*hereinafter*, 'the Institute'), assails the proceedings dated 06.02.2018 (Annexure P-8) of its Departmental Promotion Committee (DPC) recommending that two posts of Lecturer-cum-Instructor should be filled up by direct recruitment. It is his case that this recommendation impacted his right to be considered for appointment by promotion to the post of Lecturer-cum-Instructor under the promotion

quota. A consequential direction was sought to the Institute to promote him to the fifth post of Lecturer-cum-Instructor by strictly adhering to the Quota Rule.

The Institute is a society registered under the provisions of the Societies Registration Act, 1860. It is funded by the U.T. Administration, Chandigarh, and is under its control. It was affiliated to the National Council for Hotel Management and Catering Technology, New Delhi, in the year 2006-07. The petitioner entered its service as an Assistant Instructor, presently called Assistant Lecturer-cum-Assistant Instructor, in May, 2008. The Institute was governed by the Chandigarh Institute of Hotel Management (Chandigarh) Society Recruitment Rules, 1975. Thereunder, no provision was made for promotion to the posts of Lecturer-cum-Instructor and the said posts were to be filled up only by direct recruitment. While so, in November, 2014, the Board of Governors of the Institute accepted the recommendations of the National Council for Hotel Management and Catering Technology, New Delhi, and modified its Rules. In terms of the modified Rules, the posts of Lecturer-cum-Instructor were to be filled up by promotion as well as by direct recruitment in the ratio of 2:1. The eligibility for promotion to this selection post was prescribed as service of five years in the grade of Assistant Lecturer-cum-Assistant Instructor.

It may be noted that the sanctioned posts of Lecturer-cum-Instructor were eight in number but the faculty strength was fixed by the

Institute on need-based requirement. For the academic years 2017-18 and 2018-19, five such posts were proposed to be filled up but for the academic year 2019-20, six such posts were proposed. This is reflected in the 'Note' dated 14.06.2017 (Annexure P-5) of the Principal Secretary of the Institute. This being the position, in the meeting held by the DPC on 06.02.2018, out of the available five posts of Lecturers-cum-Instructors, three posts were filled up by promoting the three senior-most Assistant Lecturers-cum-Instructors. Admittedly, the petitioner stands at the fourth position in the seniority list. However, the recommendation of the DPC was that the other two posts should be filled up by direct recruitment. Acting thereupon, the Institute put up a public notice on its website.

Aggrieved by the non-consideration of his candidature for promotion to the fifth post, the petitioner filed the present writ petition. By order dated 02.07.2018, this Court directed the Institute not to finalize the selection process.

In terms of the 'Note' dated 14.06.2017 (Annexure P-5), the Institute was to have six posts of Lecturer-cum-Instructor for the academic year 2019-20. The petitioner therefore sought consideration of his candidature at least for promotion to this sixth post. He filed CM No.12504-CWP-2019 in this writ petition seeking relief in this regard. By order dated 19.11.2019, the application was disposed of directing the Institute to provisionally consider the case of the petitioner for promotion to the sixth

post which had become available. The result of such consideration was directed to be kept in a sealed cover. The said sealed cover was produced before this Court on 21.01.2020 and perusal of the result reflected that the petitioner was recommended for promotion to the post.

Mr. Raman Sharma, learned counsel for the petitioner, would however contend that in terms of the Quota Rule, the petitioner ought to have been considered against the fifth post during the DPC meeting held on 06.02.2018 and that he would suffer injustice by being pushed down to the sixth post.

Admittedly, the remaining two posts which were recommended to be filled up by direct recruitment were not actually filled up owing to stay of the selection process.

The issue therefore turns upon implementation of the ratio of 2:1 between the feeder categories of promotion and direct recruitment. This issue is no longer *res integra* as it stands settled by the judgment of the Supreme Court in '**State of Punjab V/s. Dr. R.N. Bhatnagar**' [1999(2)SCC 330]. That was also a case which centered around the quota-rota system to be adopted while implementing reservations in favour of promotees and direct recruits in the posts of Professors in the Punjab Medical College. 75% of such posts were to be filled by way of promotion and the remaining 25% were to be filled by direct recruitment. There were five posts in the cadre. The case of the respondent before the Supreme Court

was that as there were five posts in all, 75% thereof, viz, 3.75 posts, had to be reserved for promotees and only the balance 1.25 posts had to be set aside for direct recruits. He contended that the College would have to round up 3.75 to the nearest whole and in consequence, four posts had to be filled by promotion and only one post had to be filled by direct recruitment. This argument was rejected by the Supreme Court. Reference was made by the Supreme Court to the observations in **'Paramjit Singh Sandhu and others V/s. Ram Rakha Mal and others' [1982 (3) SCC 191]**, which read as under:

'...Ordinarily speaking, where recruitment is from two sources with a view to integrating recruits from both sources after the recruitment seniority is determined from the date of entry into the cadre except where there has been a substantial violation of the quota giving undeserved advantage to one or the other source. Seniority ordinarily speaking is determined with reference to the date of entry into the cadre which in service jurisprudence is styled the date of continuous officiation. These notions of service jurisprudence may have to yield place to the specific rules and the fact situation with reference to Rule 10 did compel this Court to depart from the normal concept in service jurisprudence. However, introduction of a roster system is very well known in service jurisprudence. What this Court meant while saying that when a quota rule is prescribed for recruitment to a cadre it meant that quota should be correlated to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. Promotees who came to the service at an advanced age may retire early and direct recruits who enter the service at a comparatively young age may continue for a long time. If, therefore, in a given year larger number of promotees retire and every time the vacancy is filled in by referring to the source from which the retiring person was

recruited it would substantially disturb the quota rule itself. Therefore, while making recruitment quota rule is required to be strictly adhered to'.

The Supreme Court observed that if the respondent's version was to be accepted then it would result in four vacancies being filled by way of promotion and only one vacancy being kept aside for direct recruitment and this, in substance, would mean that the percentages of reservation would be altered from 75% & 25% to 80% & 20%, which would fly in the face of the statutory rule that did not envisage such percentages. The Supreme Court accordingly held that the methodology adopted by the College was the only workable one and that was to the effect that as and when a vacancy arises in the concerned cadre of posts in any of the disciplines, the first three vacancies would go to the departmental promotees and the fourth vacancy would go to a direct recruit. The Supreme Court clarified that even in a cadre where only one post was there, it would go to a promotee in the first instance and upon his retirement or resignation, the second vacancy would go to a promotee. Similarly, the third vacancy also would go to a promotee and only the fourth vacancy would go to a direct recruit.

Though Mr. Harkesh Manuja, learned counsel, placed reliance upon the judgment of the Supreme Court in '**N.K. Chauhan and others V/s. State of Gujarat and others**'[1977(1)SCC 308], the general observations made therein with regard to the quota system do not in any way impact or

dilute the eminently logical methodology of implementation adopted by the Supreme Court in ***Dr. R.N. Bhatnagar***.

Applying the above methodology, as the rule prescribed the ratio of 2:1 between promotees and direct recruits, it meant that, out of the available five posts at that point of time, the first two had to go to promotees; the third had to go to a direct recruit; and the fourth and fifth post again had to go to promotees. The sixth vacancy, as and when it arose, would then have to be allotted to a direct recruit to complete two cycles. This is the right mode of implementation, in terms of the law laid down in ***Dr. R.N. Bhatnagar***. There is neither logic nor rationale in the methodology sought to be adopted by the Institute whereby, out of the available five posts, three were given to promotees and two were sought to be allotted for direct recruitment. By no stretch of imagination can such a methodology be taken to be reflective of the ratio of 2:1 prescribed in the Rule.

The argument of Mr. Harkesh Manuja, learned counsel, that the Institute is looking at the cadre strength and not at the vacancy position needs to be mentioned only to be rejected. There is no denial of the fact that the sanctioned strength of Lecturers-cum-Instructors in the Institute actually stands at eight and it is only the faculty strength which seems to differ from year to year, based on the need. In any event, the quota-rota rule needs to be implemented in the context of the vacancies, as and when they arise, and cannot be linked to the cadre strength. The reasons therefor were set out in

Paramjit Singh and were extracted in ***Dr. R.N. Bhatnagar, supra.***

The Institute therefore erred in not considering the petitioner for promotion to the fifth post in the DPC meeting held on 06.02.2018. In any event, as no direct recruits were brought in to fill up the remaining two posts in accordance with the recommendation of the DPC at that point of time, the fifth post still remains unfilled but the petitioner has now been recommended for promotion to the sixth post. However, on the above analysis, the fifth post would have to be allotted to the promotion feeder category and the sixth post would go for direct recruitment. In effect, the Institute would now have to promote the petitioner to the fifth post and notify the sixth post for direct recruitment. The direct recruitment process for the fifth post and the promotion process initiated for the sixth post shall stand nullified. Interim stay granted in this writ petition shall stand vacated and the process of direct recruitment to the third post shall be finalized as per due procedure. The petitioner shall be promoted to the fifth post in terms of the Departmental Promotion Committee's present recommendation as it is not in dispute that he was fully eligible for such promotion even on 06.02.2018, when the earlier Departmental Promotion Committee overlooked him. The sixth post shall thereafter be notified for direct recruitment.

The writ petition is allowed to the extent indicated above.

In the circumstances, there shall be no order as to costs.

(SANJAY KUMAR)
JUDGE

10.02.2020

rakesh

whether speaking/non speaking	:	<i>Yes/no</i>
<i>whether reportable/non reportable</i>	:	<i>Yes/no</i>