

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10167 of 2021(O&M)
Reserved on : 10.03.2023
Date of decision:17.03.2023

Urmila Devi and another ..Petitioners

Versus

State of Punjab and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jatinderpal Singh, Advocate
for the petitioners.

Mr. R.S.Pandher, Sr. D.A.G., Punjab.

ANIL KSHETARPAL, J(Oral)

1. The dispute with respect to inter-se seniority between the petitioners and respondent no.3 and 4 in the cadre of Auditors has come up for final disposal.
2. The State of Punjab while granting benefit of seniority to respondent no.3 and 4 on the basis of the catch-up rule has finalized the seniority list of the cadre of Auditors on 26.04.2021. The question is “Whether the catch-up rule has been correctly applied in the facts and circumstances of the present case?
3. The petitioners belong to reserve category, whereas respondent no.3 and 4 belong to the general category. Their inter-se position has been depicted in a table drawn by the petitioners, the correctness whereof has not been disputed by the State. Hence, the same is extracted as under:-

Description	Petitioner no.1 Urmila Devi	Petitioner no.2 Amar Nath	Respondent no.3 Sushma Devi	Respondent no.4 Jasvinder Singh
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Date of Appointment and joining into service as Steno-typist (Reference seniority list of the year 1998 (P-5))	03.08.1993 03.09.1993	03.08.1993 03.09.1993	03.08.1993 28.09.1993	03.08.1993 28.09.1993
Date of passing English type test as per rules	14.07.2000	09.11.2001 Annexure P-7	09.11.2001 Annexure P-7	09.11.2001 P-7
Date of promotion as Auditor, w.e.f.	23.10.2000 P-8	04.12.2001 P-9	28.03.2005 P-11	28.03.2005 P-11
Final seniority list of Auditors upto 31.01.2005 issued on 22.04.2005 p-10	Sr.No.53	Sr.No.54	Not in list as Finalized upto 31.01.2005	Not in list as Finalized upto 31.01.2005
Date of regular appointment as per impugned seniority list P-16	w.e.f. 09.11.2000	w.e.f. 07.12.2001	w.e.f. 30.03.2005	w.e.f. 31.03.2005
Placement in tentative seniority list in year 2015 'Auditor P-12	Sr.No.24	Sr.No.25	Sr.No.26	Sr. No.27
Placement in tentative seniority list (P-13) in year 2018	Sr.No.14	Sr.No.15	Sr.No.16	Sr.No.17
Placement in the impugned seniority list issued on	Sr.No.12	Sr.No.13	Sr.No.7	Sr.No.8

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4. The service conditions of the employees in the cadre of Auditors is regulated/governed by the Punjab Finance (Treasuries & Accounts) Department (State Service Class-III) Rules, 1979 (hereinafter referred to as the 1979 Rules). The relevant qualifications to the post of Auditor (earlier referred to as Junior Auditor in the Rules but later on, re-designated as Auditor), in terms of the Rules, as provided under Appendix reads as under:-

Junior Auditor	(i) Twenty five percent by direct appointment	(i) Graduate (ii) Should have a speed of thirty words per minute in typewriting in English	
	(ii) Fifty percent by promotion of Clerks and Steno-Typists	(i) Graduate' (ii) should have a speed of thirty words per minute in typewriting in English	Three years experience of working on either or both of the posts of Clerks and Steno-typists.
	(iii) Twenty five percent by transfer of Clerks from other Department of Punjab Government	(i) Graduate (ii) should have a speed of thirty words per minute in typewriting in English	Three years experience of working on the post of Clerk.

5. Rule 10 of the 1979 Rules lays down the procedure to determine the inter-se seniority of the members in the service in each cadre which is extracted as under:-

“10. The seniority inter-se of the members of the service in each cadre of shall be determined by the length of continuous service on a post in that cadre of the Service.

Provided that in the case of members recruited by direct appointment through the Board or any other

recruiting authority the order of merit determined by the Board or other recruiting authority, as the case may be, shall not be disturbed in fixing the seniority;

Provided further that in case of two or more members appointed on the same date, their seniority shall be determined as follows:-

(a) a member recruited by direct appointment shall be senior to a member recruited otherwise:

(b) a member appointed by promotion shall be senior to a member appointed by transfer:

(c) in the case of members appointed by promotion or transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

(d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same then by their length of service in those appointments; and if length of service in these appointments is also the same, an older member shall be senior to a younger member.

Note.-Seniority of members appointed on purely provisional basis, shall be determined as and when they are regularly appointed keeping in view the date of such regular appointment."

6. It is pertinent to point out that there are two sources of recruitment to the cadre of Auditors in the department, one by 'Direct Recruitment' and second by 'Promotion' which is further sub-divided into various categories. There are 57 sanctioned posts of Auditors out of which 29 are earmarked for the promotion quota. It is evident from a perusal of the Appendix that 25% of the posts of Auditors are required to be filled in by Direct Recruitment, whereas, 50% is reserved to be filled by promotion of Clerks and Steno-typists. The remaining 25% are required to be filled in by transfer of Clerks from other departments of Punjab Government. One of

the condition for eligibility for promotion is that the Clerk or the Steno-typist should have a speed of typewriting 30 words per minute in English. For assessing the speed, a departmental English type test is held from time to time.

7. On 26.07.1999, a type test was held for filling in 4 backlog vacancies in the promotion quota. The petitioners as well as Sh. Nasib Singh and Sh. Surender Singh took part in the type test. Sh. Nasib Singh and Sh. Surender Singh were at Sr. No. 36 and 37 in the seniority list of the feeder cadre, whereas the petitioners were at Sr. No.30 and 31. The petitioners failed to clear the test, whereas, Sh. Nasib Singh and Sh. Surender Singh were declared successful. Thereafter, Sh. Nasib Singh and Sh. Surender Singh were promoted as Auditors on 24.04.2000. In order to fill the backlog of the remaining two vacancies in the reserve category, a type test was again held on 14.07.2000 and only the petitioners, as they belong to the reserve category, were given the opportunity to take the test. The petitioner no.1 was declared successful, whereas, petitioner no.2 failed in the type test. Thus, petitioner no.1-Mrs. Urmila Devi was promoted as Auditor on 23.10.2000 and she joined as such, on 09.11.2000. Thereafter, again a common type test was held for general as well as reserve category candidates on 31.10.2001. The petitioner no.2 and respondent no.3 and 4 successfully passed the said type test. The petitioner no.2 was promoted as Auditor on 05.12.2001, whereas, he joined on 07.12.2001. Thereafter, respondent no.3 and 4 were promoted on 28.03.2005 as Auditors by the department, whereas they joined on 30.03.2005.

8. It is evident that the petitioners were senior to the private

respondent no.3 and 4 in the respective feeder cadres i.e. Clerks/Stenotypist. A seniority list was issued on 22.04.2005 with respect to the Auditors upto 31.01.2005, wherein, the petitioners were placed at Sr. No.53 and 54 respectively, whereas, the names of respondent no.3 and 4, who were not promoted by then, were not included. Respondent no.3 and 4 joined as Auditors on 30.03.2005. In the tentative seniority list issued in 2015 and as well as in 2018, the petitioners were placed over the private respondents. Though, while issuing the seniority list dated 26.04.2021, no reason has been assigned for placing the respondent no.3 and 4 above the petitioners, however, while filing the written statement, it has been disclosed that the private respondents have been given the benefit of rule of catch-up as originally envisaged in the judgment passed by the Supreme Court in **Union of India vs. Virpal Singh Chauhan, (1995) 6 SCC 684** which was further explained and expanded by a five Judge Bench of the Supreme Court in **Ajit Singh and other (II) Vs. State of Punjab and others (1999) 7 SCC 209.**

9. This bench has heard the learned counsels for the parties at length and with their able assistance perused the paper book as well as the written arguments filed by them.

10. As already noticed, the rule of catch-up was originally expounded in **Virpal Singh Chauhan's case (supra)** which was subsequently expanded and explained in **Ajit Singh's-II case (supra)**. The *sine-qua-non* for the applicability of the catch-up rule is that if an employee gets accelerated promotion on account of reservation and a general category employee, who was senior to such reserved category employee in the feeder cadre, gets promoted subsequently, they by application of the catch-up rule,

the general category senior employee in the feeder cadre shall be placed higher than the employee who got accelerated promotion on account of reservation prior to his senior provided that the reserve category employee is still on the next level. This rule will not be applicable in a situation where the candidate getting accelerated promotion, belonging to reserve category, has further been moved up to the next promotional post.

11. In the present case, the application of the catch-up rule is not made out on account of the following reasons:-

- (1) The petitioners were senior to the private respondents in the feeder cadre. Hence, the rule of Catch-up is not applicable qua the petitioners.
- (2) As per the Service Rules, an employee is required to have a speed of 30 words per minute in typewriting in English for which departmental English type test is held from time to time. Before someone can be considered for promotion, it is necessary to pass the type test. In the absence thereof, one is not eligible to be considered for promotion. In the present case, the respondent no.3 and 4 joined on the promoted post on 30.03.2005 pursuant to the order of promotion dated 28.03.2005, whereas, the petitioners were promoted on 23.10.2000 and 05.12.2001, respectively. Admittedly, the respondent no.3 and 4 were not eligible to be considered for promotion at the time when the petitioner no.1 and 2 were promoted as Auditors.

- (3) The Hon'ble Supreme Court in *Sudhakar Baburao Nangnure vs. Noreshwar Raghunathrao Shende and others (2020) 11 SCC 399* has held that the catch-up principle cannot be applied in ignorance of the requirement of meeting the eligibility criteria in addition to the criteria for determining seniority-cum-merit.
- (4) It is the admitted case of the State that there were four backlog vacancies in the reserve category. It was precisely for this reason that the type test was held for reserve category candidates in July, 1999, 2000. The private respondents never made any grievance that they should also be allowed to participate. Once the vacancies were only for the reserve category, the petitioners were correctly permitted to participate in the type test and on passing of the examination, they were promoted. The private respondents were not entitled to be considered for promotion against the reserved category vacancy.
- (5) While filing the written statement, the State has not even asserted that the respondent no.3 and 4 were senior to the petitioners in the feeder cadre. Hence, the rule itself is not applicable.
- (6) Moreover, it is evident from a bare perusal of the forwarding letter attached with the seniority list that the competent authority has failed to record any reason whatsoever while ordering the grant of benefit of catch-

up rule to the private respondents. The competent authority, while issuing the final seniority list, is required to pass a speaking order detailing the reasons and dealing with the objections, if any, filed. The government has issued the forwarding letter by observing that the final seniority list is issued without dealing with the objections, if any, filed.

12. Keeping in view the aforesaid facts, the final seniority list issued on 26.04.2021 is quashed to the extent of granting benefit of catch-up rule to the private respondents. The competent authority is directed to prepare a fresh seniority list within a period of two months, in accordance with the observations made, hereinbefore.

13. The writ petition is allowed.

14. All the pending miscellaneous applications, if any, are also disposed of.

17th March, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No