

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-27253-2022 (O&M)

Reserved on: 06.01.2023

Date of decision: 12.01.2023

NARDEEP SINGH

..Petitioner

Versus

STATE OF PUNJAB AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. D.S. Patwalia, Sr. Advocate
with Mr. Gauravjit Singh Patwalia, Advocate
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

Mr. Gurminder Singh, Sr. Advocate
with Mr. Jatinder Singh Gill, Advocate
Mr. Sunil Garg, Advocate
for respondent No.4.

Mr. Ranjit Singh Kalra, Advocate
for respondent No.5 to 8.

ANIL KSHETARPAL, J(Oral)

1. Primarily, the petitioner prays for the issuance of a writ in the nature of certiorari to quash the final seniority list of the Audit Officers issued on 14.11.2022. The petitioner and the private respondents are working in the Department of Cooperation, Punjab. The petitioner, being physically handicapped, got accelerated promotion on 01.09.2016 as Audit Officer, whereas, the private respondents were directly recruited on 28.02.2017 & 04.12.2017 as Audit Officers. In my opinion, the following issue requires adjudication:-

“If the direct recruits are appointed subsequent to the date of accelerated promotion of the junior reserved category promotees but prior to the date of promotion of senior general category promotees, at the post Audit

Officer, then, while applying the catch-up rule in determining the seniority among the promotees of two different categories and the direct recruits, what is the correct method of working out the seniority?”

2. The petitioner was appointed under the physically handicapped quota as Audit Inspector on 03.10.2001. He was promoted as Senior Auditor vide order dated 21.12.2011. Thereafter, he was promoted as Audit Officer vide order dated 17.08.2016 and he joined as such on 01.09.2016. The private respondents came to be directly recruited as Audit Officers in the years 2017-18. For convenience, it is considered appropriate to extract the relevant information of the various Officers, from the seniority list issued by the employer, in a tabulated manner, which is as under:-

Sr. No.	Name of the Audit Officer	Date of birth	Date of retirement	Date of joining as A.O.	Category	Direct recruitment/promotion/merit No.
1.	Paramjit Singh s/o Sh. Gian Singh	05.10.1961	31.10.2021	30.08.2016	General Physically handicapped	By Promotion
2.	Naval Kishore son of Sh. Krishan Lal Goyal	23.10.1990	31.10.2048	21.02.2018	General	Direct recruitment Merit-1
3.	Rachna Gupta daughter of Sh. Harbilas Gupta	20.11.1979	30.11.2037	04.12.2017	General	Direct recruitment Merit-2
4.	Sarabjit Singh s/o Sh. Hari Singh	05.05.1976	31.05.2034	04.12.2017	S.C.	Direct recruitment Merit-7
5.	Sukhdev Singh s/o Sh. Ajaib Singh	13.01.1974	31.01.2032	04.12.2017	B.C.	Direct recruitment Merit-8
6.	Baldev Singh s/o Sh. Prem Singh	14.02.1976	28.02.2034	05.12.2017	S.C.	Direct recruitment Merit-11
7.	Pradeep Kumar s/o Sh. Jatinder Pal	23.06.1969	30.06.2027	13.06.2019	General	By Promotion
8.	Darshan Kumar s/o Sh. Ram Bhaj Rai	28.05.1973	31.05.2031	13.06.2019	S.C.	By Promotion
9.	Gagandeep Singh s/o Sh. Amrik Singh	12.08.1976	31.08.2034	13.06.2019	General	By Promotion
10.	Manmohan Singh s/o Sh. Sarjit Singh	24.11.1967	30.11.2025	26.07.2019	B.C.	By Promotion
11.	Vijay Singla s/o Sh. Prem Chand	20.10.1972	30.11.2030	05.08.2019	General	By Promotion

12.	Nardeep Singh (writ petitioner) s/o Sh. Ram Singh	06.07.1981	31.07.2041	01.09.2016	General Physically handicapped	By Promotion
13.	Sukhcharan Singh s/o Sh. Mohinder Singh	13.01.1972	31.01.2030	15.07.2019	General	By Promotion
14.	Jyoti daughter of Sh. Jatinder Dutt	06.07.1970	31.07.2028	17.12.2019	General	By Promotion

3. The service of employees of the Audit Department is governed by the Punjab Cooperative Audit (Group B) Service Rules, 2007. Rule 9 thereof provides that if the rules are silent in respect of any matter, then the members of the service shall be governed by the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 in that matter.

4. Rule 8 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, read as under:-

*“**Seniority** - The seniority inter se of persons appointed to posts in each cadre of a Service shall be determined by the length of continuous service on such post in that cadre of the Service.*

Provided that in the case of persons recruited by direct appointment who join within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four Months from the date of order of appointment the order of merit determined by the Commission or the Board, as the case may be, shall not be disturbed:

Provided further that in case a person is permitted to join the post after the expiry of the said period of four months in consultation with the Commission or the Board, as the case may be, his seniority shall be determined from the date he joins the post:

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso joins, the person so referred shall be placed below all the persons of the next selection who join within the time specified in the first proviso:

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

(a) a person appointed by direct appointment shall be senior to a person appointed otherwise;

(b) a person appointed by promotion shall be senior to a person appointed by transfer;

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

(d) in the case of persons appointed by transfer from different cadres their seniority shall be determined according to pay, preference being given to a person 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 these appointments and if the length of service is also the same, an older person shall be senior to a younger person:

[Provided further that in the case of persons recruited by direct appointment in the same cadre obtaining equal marks during same selection process, their inter-se-seniority shall be determined on the basis of their age. That is, an older person shall be senior to the younger person.]

Note:- *Seniority of persons appointed on purely provisional basis or on ad hoc basis shall be determined as and when they are regularly appointed keeping in view the dates of such regular appointment.*

5. It is evident that the inter se seniority of persons appointed to the post in each cadre of service is required to be determined by the length of continuous service on such post in the respective cadre of service.

6. It is not disputed that Sh. Gagandeep Singh, Sh. Manmohan Singh, Sh. Vijay Singla and Sh. Darshan Kumar were senior to the petitioner-Sh. Nardeep Singh (the petitioner) in the cadre of Inspector as well as Senior Auditor. The petitioner, on getting accelerated promotion under reservation quota to the post of Audit Officer, joined on 01.09.2016. Sh. Pradeep Kumar, Sh. Darshan Kumar, Sh. Gagandeep Singh, Sh. Manmohan Singh and Sh. Vijay Singla were promoted to the post of Audit

Officer from the general category while Sh. Nardeep Singh was working as Audit Officer. In-between the relevant dates of 01.09.2016 and 13.06.2019, respondents No.4 to 8 (Sh. Naval Kishor, Ms. Rachna Gupta, Sh. Sarabjit Singh, Sh. Sukhdev Singh and Sh. Baldev Singh) were directly recruited, basically in the year 2017-2018.

7. The Government has placed respondent No.4 to 8 at Serial no.2 to 6, whereas, the general category promotees have been placed from Serial No.7 to 11 while the petitioner has been placed at Serial No.12. He claims that he could not be placed below respondents No.4 to 8 in the seniority list.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook as well as the short notes of their submissions.

9. On the one hand, the learned Senior counsel representing the petitioner while referring *in extenso*, to the judgment passed in **Ajit Singh and other (II) Vs. State of Punjab and others (1999)7 SCC 209**, contends that under the catch-up rule, the Officers who are general category promotees, placed at Serial No.7 to 11 have correctly been assigned seniority over and above the petitioner, however, respondents No.4 to 8, who are direct recruits, have been wrongly placed above the petitioner. The learned counsel relies upon para 83 of the judgment to contend that the Five Judge Bench after considering the aforesaid issue, has held that the direct recruits will not march over the previously reserved category promotees. He further submits that respondent No.4 to 8 cannot be granted retrospective seniority in the cadre from a date when they were not even born on the cadre, particularly when the relevant Service Rules provide that the inter se seniority shall be determined by the length of continuous service on such

post which implies actual service rendered. In support of his submissions, he relies upon the judgment delivered in **Ganga Vishan Gujrati and others Vs. State of Rajasthan and others 2016(16) SCC 28 and State of Bihar and others Vs. Arbind Jeet, 2021 SCC Online SC 821.**

10. On the other hand, various learned counsels representing the respondents contend that under the catch-up rule, the candidate who has been promoted on account of reservation is placed below his seniors in the feeder cadre who got promoted subsequently. It is submitted that once under the catch-up rule, the general category promotees/Officers placed at Serial No.7 to 11 are required to be given seniority over and above the petitioner then, the petitioner has been rightly placed at Serial No.12 below the respondents No.4 to 8 who were appointed prior to the general category promotees listed at Serial No.7 to 11.

11. The catch-up rule was expounded in **Union of India Vs. Virpal Singh Chauhan 1995(6) SCC 648.** Subsequently, in **Ajit Singh (I) Vs. State of Punjab, 1996(2) SCC 415,** the aforesaid principle of law was further elaborated. On various miscellaneous applications filed by the State of Punjab for clarification, the matter was referred to the Five Judges Bench in **Ajit Singh (II) case (Supra),** which culled out the following points for adjudication:-

- (1) Can the roster point promotees (reserved category) count their seniority in the promoted category from the date of their continuous officiation vis-a-vis general candidates who were senior to them in the lower category and who were later promoted to the same level?*
- (2) Have Virpal, Ajit Singh been correctly decided and has Jagdish Lal been correctly decided?*
- (3) Whether the 'catch-up' principles contended for by the general candidates are tenable?*

(4) What is the meaning of the 'prospective' operation of Sabharwal and to what extent can Ajit Singh be prospective?

12. While elaborately examining the various aspects of the case, it was held that the judgments passed in **Virpal Singh Chauhan's case (supra)** and **Ajit Singh (I) case (supra)** are correct enunciation of law, whereas, the judgment passed in **Jagdish Lal Vs. State of Haryana (1997) 6 SCC 538** was over-ruled. While examining point No.3, the Court discussed the catch-up rule and thereafter, examined the various aspects governing the same. Para 83 of the judgment is relevant to our discussion, wherein, the Supreme Court examined the correctness of the arguments of the learned Senior counsel Sh. K. Parasaran and Sh. Raju Ramachandran. It was held that a direct recruit or a recruitee by transfer at promotional level can have no grievance against a senior general category candidate who has a superior claim in law against the reserved category promotee.

13. The relevant Para 83 of the judgment is extracted as under:-

“83. Learned senior counsel Sri K. Parasaran and Sri Raju Ramachandran then adverted to a situation which according to them might create serious problems if a senior general candidate is to be treated as senior at the promotional level if he reaches that level before the roster promotee goes further up. The examples given refer to cases where after the roster point promotee (reserved candidate) reaches the promotional level, there is direct recruitment or recruitment by transfer at that promotional level. Counsel submit that, if a senior general candidate is thereafter promoted and placed above the reserved candidate, can he become senior to the direct recruit and transferee? We do not find any anomaly. The direct recruit or transferee who has no grievance against the reserved candidate who was already there can have no grievance against a senior general candidate who has a superior claim, in law, against the reserved candidate.”

14. In the considered opinion of this Court, the afore-extracted paragraph of the judgment, squarely, rules in favour of the petitioner.

15. As far as the argument of the learned counsels representing the respondents is concerned, although, undisputedly, respondent No.4 to 8 were directly recruited to the posts of Audit Officer in the years 2017-2018, however, they have wrongly been given the benefit of the catch-up rule and are not entitled to it. The aforesaid benefit is available only to the senior general category candidates who were promoted subsequent to their juniors from the feeder cadre on account of reservation. In simple language, the catch-up rule provides that if a roster bound promotee/reserved category candidate gets promoted prior to those who were his seniors in the original/feeder cadre and the aforesaid seniors are subsequently, promoted to the same level as that of the roster bound promotee while roster bound promotee is still at the same position and has not been further promoted, then, the aforesaid seniors of general category, who have been promoted subsequently shall regain their seniority as per their original position. However, such benefit is not available to the direct recruits. Respondent No.4 to 8, who have been placed at Serial No.2 to 6, in the seniority list, were recruited as Audit Officers in 2017-2018, whereas, the petitioner was promoted on 01.09.2016 in the same cadre. By applying Rule 8 of Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, the petitioner will be placed at a higher place to respondents No.4 to 7, though below the officers placed at Serial no.7 to 11. Thus, it is evident that the order passed on 09.11.2022 (Annexure P-11) is a result of incorrect interpretation and application of the catch-up rule. On the reading of the order (Annexure P-11), it is evident that the office has failed to examine the

issue which was pressed by the petitioner while filing the objections to the tentative seniority list.

16. There is yet another aspect of the matter. The impugned order is, totally, a non-speaking order. While referring to the advice given by the Department of Personnel, the concerned Officer has directed the finalization of the seniority list. It is expected that while deciding such a contested issue, the Competent Authority applies its mind and gives brief reasons but sound in support of the particular conclusion arrived at. There has to be a rational appreciation of the points taken up in the objection petition by the Competent Authority. The critical examination of the points raised is the hallmark of a speaking order, which is, unfortunately, lacking in the present case.

17. Though, the learned counsel representing the respondents have taken various objections with regard to the concealment of facts, estoppel etc, however, during the course of arguments, none of the aforesaid objections have been pressed upon. One of the counsel has argued that the petitioner has not challenged the correctness of the advice received by the Competent Authority on 13.01.2022 and 13.05.2022. It may be noted here that the advice given by the Department of Personnel is not binding and is only for the aid and assistance of the Competent Authority. Once the correctness of the final order passed by the Competent Authority has been questioned, there is no requirement to challenge the advice of the Department of Personnel, separately.

18. Although, no doubt, the direct recruits have a grievance as they were recruited prior to the general category candidates, directly in the cadre of Audit Officers, however, the general category candidates have earned

their promotion to the said post while competing with various other persons at the feeder cadre. They have also gained sufficient experience while working in the feeder cadre posts. A reserved category promotee has been allowed to steal march over them only on account of accelerated promotion. The general category candidates are not permitted to compete on the posts which are reserved. In such circumstances, in order to balance the equities, the catch-up rule has been devised. It has been held that the catch-up rule would uphold and balance the fundamental rights of equality and against discrimination with respect to all categories of the employees. It is well settled that the rules of reservation are carried out in order to provide adequate representation to the underprivileged section of the society. The aforesaid object stands achieved by granting employment as well as accelerated promotion to the reserved category candidates. However, the general category candidates, who are promoted subsequently, have a right to re-gain their seniority as per their position in the feeder cadre to balance the interest of all the categories concerned. If the direct recruits are also allowed to steal march over the reserved category promotee, then, it will result in the infringement of the rule of seniority, because the direct recruits are employed in the cadre after the promotion of the reserved category candidates.

19. It is also well settled that the direct recruits cannot be granted seniority with a retrospective effect from a date which is even prior to the date on which they were born in the cadre. It is evident that respondent No.4 to 8 have been granted seniority position No.2 to 6 over and above the petitioner, who has been assigned seniority position No.12. Thus, respondent No.4 to 8 have been granted seniority from a date which is even prior to the

date on which they were born in the cadre. This Court derives support from the judgment in *Ganga Vishan Gujrati's case (supra) and Arbind Jeet's case (supra)*, relied upon by the learned Senior counsel representing the petitioner.

20. There is also no force in the argument of the learned counsel representing the respondents that the seniority of the petitioner is required to be brought down rather than granting seniority to his seniors who were subsequently promoted from the general category. Similarly, the argument of the respondents' counsels with regard to reverse discrimination is also without substance as if the converse position is applied, it would lead to infringement of the rule of seniority. The Supreme Court has established the catch-up rule and not the catch-down rule.

21. Resultantly, the writ is allowed. The order dated 09.11.2022 along with seniority list of Audit Officer in the Department of Cooperation, Punjab, is quashed. The Department is directed to revise the seniority list in accordance with the observations made in this judgment, within a period of two months, from today.

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

January 12th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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