

2025:PHHC:027497



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

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**CWP-6723-2021
Date of decision: 19.02.2025**

MEENA KUMARI

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Sunil Panwar, Advocate
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

Mr. Kuldeep Sheoran, Advocate
for respondent No. 5.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenging the promotion order dated 30.12.2020, letter dated 21.01.2020 and order dated 18.02.2021, the petitioner has approached this court. Further prayer has also been made to promote the petitioner to the post of Stenographer from the date when her junior was promoted along with all consequential benefits and also to set aside clause 2 of the appointment letter dated 30.10.2013.

2. Succinctly and tersely the germane facts and material relevant for deciding the instant petition and emanating from the record are that the petitioner was selected as a Steno-Typist (both languages) under Advertisement No. 3/2010, Category No. 28, and joined the said post on 31.10.2013 in the office of the Deputy Commissioner, Bhiwani, based on the

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recommendation of the Haryana Staff Selection Commission and the letter of appointment dated 30.10.2013.

3. As per the merit list, she was ranked first, whereas respondent No. 5 was ranked third. However, no seniority list was prepared either in Bhiwani (2013-2016) or in Charkhi Dadri (formed in 2016), where she was transferred and has been the senior-most Steno-Typist since 01.12.2016.

4. On 30.12.2020, respondent No. 5 was promoted to the post of Stenographer, bypassing the petitioner's rightful claim and violating rules mandating that the order of merit shall not be disturbed while fixing seniority, in case of members appointed by Direct Recruitment.

5. Aggrieved thereof, the petitioner filed a representation on 29.01.2021, which was however rejected on 18.02.2021, citing her later date of joining (31.10.2013) compared to respondent No. 5 who joined on 29.07.2013, despite the delay in issuing her appointment letter not being for her fault.

6. The petitioner has also qualified the State Eligibility Test in Computer Applications (SETC) on 09.10.2020, which is mandatory for promotions, however, her departmental examination for promotion was delayed arbitrarily, whereas respondent No. 5's exam was conducted by the respondents within two months of his request.

7. The present petition has thus been filed alleging violation of the rules, the lack of transparency in the promotional process, non-preparation of a seniority list as per law and extending undue advantage to respondent No. 5 to defeat the rights of the petitioner.

**Arguments of the Petitioners**

8. The counsel for the petitioner argues that governance and decision-making must embody principles of equity, fair play, and justice, adhering strictly to the rule of law. Decision-making should not only be transparent but also create a perception of integrity and probity. Authorities are expected to act impartially, free from vested interests and nepotism, and must avoid a mere superficial compliance. Furthermore, the right for being considered for promotion is not only a statutory entitlement but also a recognized legal right. Alleging that the respondents' actions and omissions constitute a blatant violation of law rendering the impugned seniority list and promotion orders favoring private respondents as illegal, arbitrary, unconstitutional, and contrary to the service rules and government guidelines and hence liable to be quashed.

9. The counsel contends that the petitioner joined on the post of Steno-Typist on 31.10.2013 in the office of Deputy Commissioner, Bhiwani on issuance of letter of appointment on 30.10.2013 and was posted in Charki Dadri (then a sub division in District Bhiwani) and that no enquiry or disciplinary proceedings are pending or decided against the petitioner. No final seniority list of Steno-Typists was ever prepared, either in the erstwhile District Bhiwani (before the creation of Charkhi Dadri) or thereafter in the newly formed District Charkhi Dadri. The petitioner has been serving in Charkhi Dadri since 01.12.2016, making her the senior-most Steno-Typist in the district. Respondent No. 5, on the other hand, was transferred to Charkhi Dadri only on 25.07.2017, approximately eight months later.



10. The counsel vehemently argues that the petitioner was placed at Sr. No. 1 in the merit list issued by the Haryana Staff Selection Commission, whereas respondent No. 5 was ranked Sr. No. 3. Despite this, respondent No. 5 was promoted to the post of Stenographer vide order dated 30.12.2020, in complete disregard of the petitioner's rightful claim. This action is in violation of Rule 11 of the Haryana Revenue Department District Subordinate (Group C) Service Rules, 1988, which clearly stipulate that the order of merit determined by the selection board shall not be disturbed while fixing seniority.

11. The counsel submits that the respondents have wrongly relied on the date of joining as a criterion to determine seniority, ignoring the fact that the delay in issuing the petitioner's appointment letter (dated 30.10.2013) was entirely due to administrative lapses of the respondents, for which she cannot be penalized. The petitioner immediately reported for duty, without any delay, on 31.10.2013, well within the stipulated time frame. The respondents' failure to issue her appointment letter in a timely manner, despite her standing first in the merit list, is an administrative lapse, which cannot be founded for deprivation of promotion.

12. The counsel further contends that the petitioner made a representation against her supersession on 29.01.2021, which was arbitrarily dismissed on 18.02.2021. The rejection of her representation is based on a misinterpretation of the service rules, ignoring the principle that merit-based seniority must be upheld in direct recruitment cases.

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13. The counsel vehemently argues that the petitioner had duly qualified the State Eligibility Test in Computer Appreciation and Applications (SETC), which is only a qualifying examination, the petitioner was discriminated even there. While respondent No. 5's departmental examination was conducted within two months of his application, the petitioner's request for the State Eligibility Test in Computer Applications (SETC) was ignored for over a year, forcing her to send multiple reminders. The discriminatory delay in conducting the petitioner's examination, and the suspiciously expedited process for respondent No. 5, further casts serious doubt on the fairness of the official respondents. Such an arbitrary and selective approach is not only unfair but violates the petitioner's right to equal treatment.

14. Pointing out the previous conduct of the department, the counsel brings the attention of this court to several past promotions to the post of Stenographer have been granted without requiring candidates to qualify the departmental examination beforehand. In many cases, the examination was permitted after promotion, with a grace period for compliance. The respondents' shifting stance in the petitioner's case, wherein they now insist on a precondition of passing the departmental examination for Stenographer, is contrary to established practice and intended solely to justify the wrongful promotion of respondent No. 5.

15. The counsel also submits that the petitioner sought official records to substantiate her claim, but the respondents deliberately withheld



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relevant documents and manipulated the seniority panel by placing respondent No. 5 ahead of the petitioner. This was done without informing or consulting the petitioner, depriving her of a fair opportunity to challenge the process at an earlier stage. The bias in favor of respondent No. 5, who has access to official documents within the Deputy Commissioner's office, is evident. Such non-transparent decision-making renders the entire promotion process arbitrary and unlawful.

16. He argues that the respondents in the present petition being functionaries of welfare state are obligatory to issue appointment letters to the petitioner as well as the private respondent immediately after recommendation of HSSC and cannot penalize the petitioner for their own default. The counsel places reliance on the matter of ***State of Maharashtra v. Jagannath Achut Karandikar*** reported as ***1990(1) SLJ 146 (SC)*** wherein the Hon'ble Supreme Court held that it would be unjust, unreasonable and arbitrary to penalize a person for the default of the Government and its functionaries in not taking the required action.

17. Further, in the matter of ***Navjeet Kaur v. Navneet Walia & Ors.*** reported as ***2017 (3) SCT 532***, Hon'ble Division Bench of this court held that the candidate whose appointment letters were issued later on but they joined within the stipulated time specified in the appointment letter, such candidates would be entitled to rank senior in order of their merit, irrespective of joining later in time, as there is no fault of the petitioner for delay in issuance of appointment letter.



18. The counsel also places reliance on the matters of *Hon'ble Punjab & Haryana High Court v. State of Punjab* reported as **2018 (4) SCT 522**, *K.R. Babu v. State of Kerala* reported as **2017 (4) SCT 801** and *Monica Malik v. State of Haryana & Ors.* reported as **2018 (4) PLR 800** wherein the apex court has observed that the date of joining would not be a relevant factor for determining seniority of direct recruits. Seniority will be counted on the basis of comparative merit in the selection by the Selection Commission and not from the date of appointment or joining. There might be delay on the part of the appointing authority in issuing orders of appointments or joining and delay in administrative action could not deprive an individual of their due seniority. Dates of joining and appointment are fortuitous circumstances and accordingly have no material bearing on the issue of inter-se seniority of direct recruitment in the same batch who participated in the same selection process.

19. It is hence prayed that the impugned promotion of respondent No. 5 is arbitrary, illegal and contrary to established legal principles governing merit-based seniority. The petitioner, being the senior-most candidate as per merit, is rightfully entitled to promotion.

Arguments of the Respondent

20. Learned State Counsel contends that the petitioner has failed to exhaust the available departmental remedies before filing the present writ petition. While the departmental rules do not explicitly provide for an appeal or revision to a higher authority, the Government of Haryana has issued clear instructions vide letter No. 9872-5GS-62/29821 dated 28.08.1962,

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subsequently circulated through letter No. 2029-5GS-69/9077 dated 08.05.1969 (Annexure R-2), which outline the procedure for government employees to submit representations and petitions.

21. The counsel further argues that as per the aforementioned instructions, the petitioner should have availed the opportunity to submit a representation against the impugned orders dated 30.12.2020 and 18.02.2021 before the Financial Commissioner & Additional Chief Secretary to the Government of Haryana, Revenue & Disaster Management Department, Chandigarh, who is the next higher authority. However, the petitioner failed to do so, rendering the present writ petition liable to dismissal on this ground alone.

22. The counsel places reliance on the appointment letter issued to the petitioner and contends that the petitioner has no *locus standi* to file the present writ petition as the appointment letter issued to the petitioner on 30.10.2013 (Annexure P-1) explicitly stipulated at Clause 2 that she would be placed junior in the seniority list below the members of the service already working in the department. The answering respondent, having joined the department on 29.07.2013, was rightfully placed senior to the petitioner in accordance with this condition, which the petitioner never challenged until the date of the answering respondent's promotion.

23. Moreover, the counsel submits that Seniority alone is not the sole criterion for promotion from Steno-Typist to Stenographer. As per the Haryana Revenue Department Divisional Subordinate (Group C) (Amendment) Rules, 2000 (as amended from time to time), the eligibility

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conditions for promotion to the post of Stenographer is three years of experience as a Steno-Typist and successful completion of the departmental shorthand and transcription tests in both Hindi and English. The petitioner submitted her application for the stenography test on 02.12.2019 and passed the test on 11.01.2021, whereas the answering respondent had already passed the test on 06.11.2019, well before the petitioner even applied. Consequently, the answering respondent was eligible for promotion prior to the petitioner, both in terms of seniority and fulfillment of required qualifications. Hence, the writ petition lacks merit and is liable to be dismissed.

24. The counsel further contends that Respondent No. 5 submitted an application for the departmental stenography test, which was duly forwarded by the Deputy Commissioner to the Divisional Commissioner. Upon qualifying the test, Respondent No. 5 was promoted after a period of more than 18 months post-qualification. As per the rules, only employees who have completed three years of service as a Steno-Typist and have successfully passed the departmental test are eligible for promotion. In the present case, the petitioner applied for the test after Respondent No. 5 and qualified only after his promotion. Consequently, eligible junior employees were rightfully promoted in the absence of senior qualified employees.

25. Arguing on the issue of determination of seniority in the context of Charki Dadri being carved out from Bhiwani, the counsel argues that since both the petitioner and the answering respondent were originally appointed in District Bhiwani and later fell under District Charkhi Dadri



following its creation, their seniority was determined based on their original date of appointment in the parent office.

- The answering respondent was offered an appointment by the Deputy Commissioner, Bhiwani, on 26.07.2013 and joined service on 29.07.2013.
- The petitioner was offered an appointment on 30.10.2013 and joined service on 31.10.2013.

Given the three-month gap between their joining dates, there was no justification to maintain seniority in accordance with the recommendation list of the Haryana Staff Selection Commission. Furthermore, the petitioner was expressly placed junior as per the terms of her appointment, a condition that remained unchallenged until the answering respondent's promotion.

26. The counsel further argues that as per Haryana Government instructions issued vide No. 42/164/2008-3GSII dated 22.09.2017, the State Eligibility Test in Computer Appreciation and Applications (SETC) is mandatory only for Group 'C' clerical posts and is not applicable to promotions from Steno-Typist to Stenographer. Consequently, the petitioner's reliance on SETC-related requirements is misplaced. The answering respondent was promoted only after passing the required stenography test. The petitioner's reference to instances where employees were promoted with the condition of passing the test within a year is irrelevant, as such a condition was unnecessary when a senior qualified employee (i.e., the answering respondent) was already available for promotion.



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27. The counsel vehemently contends that the petitioner's representation dated 29.01.2021 (Annexure P-5) was duly considered and decided upon by Respondent No. 2 through a well-reasoned and detailed order dated 18.02.2021 (Annexure P-6). The order adequately addressed all contentions raised by the petitioner, and there is no ground for further intervention by this Court.

28. Counsel for respondent No.5 adopts the same arguments.

29. No other arguments has been raised by the counsel for the parties.

30. I have heard the learned counsel appearing on behalf of the parties and has gone through the pleadings as well as the documents appended as also the judgments relied upon by the counsel for the parties.

Consideration

31. Before proceeding further with adjudication of this dispute, it is important to highlight the importance of right to promotion as has been held by the Hon'ble Supreme Court in the matter of **Ajay Kumar Shukla v. Arvind Rai** reported as **(2022) 12 SCC 579**:

40. ...The appointing authority ought to have prepared a combined merit list based upon the performance or the proficiency on the basis of the marks received in the selection test as prepared by the Commission. Otherwise, it would amount to denial of the right of consideration for promotion to a more meritorious candidate as against a candidate having lesser merit. Right to promotion is not considered to be a fundamental right but consideration for promotion has now been evolved as a fundamental right.

(Emphasis supplied)



32. Although an argument has been raised by the counsel for the respondents that the present petition is liable to be dismissed on the ground that the petitioner has failed to exhaust the alternative departmental remedies available to him by way of submitting a representation against the impugned orders before the Financial Commissioner & Additional Chief Secretary to the Government of Haryana, Revenue & Disaster Management Department, Chandigarh, who is the next higher authority.

33. Hon'ble Court in the matter of ***UP State Spinning Co. Ltd. v. R.S. Pandey & Another*** reported as ***(2005) 8 SCC 264*** dealt with the issue of maintainability of writ petition when alternative remedy is available and held that writ petition under Article 226 of the constitution should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out. The observations of the Apex Court are as under:

“16. ...There are two well-recognised exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings themselves are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

(Emphasis Supplied)



34. Further, in the matter of ***U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karamchari Sangh*** reported as ***(2004) 4 SCC 268*** has held that:

“12. Although these observations were made in the context of the jurisdiction of the civil court to entertain the proceedings relating to an industrial dispute and may not be read as a limitation on the Court's powers under Article 226, nevertheless it would need a very strong case indeed for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner.”

35. Observations to the same effect were also made in ***Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*** reported as ***(1976) 1 SCC 496***, ***Rajasthan SRTC v. Krishna Kant*** reported as ***(1995) 5 SCC 75***, ***Chandrakant Tukaram Nikam v. Municipal Corpn. of Ahmedabad*** reported as ***(2002) 2 SCC 542*** and in ***Scooters India v. Vijai E.V. Eldred*** reported as ***(1998) 6 SCC 549***.

36. A perusal of the aforesaid makes it clear that if an alternative remedy is present under the statute, a writ court should not ordinarily exercise its power under Article 226 of the Constitution until there is gross violation of principles of natural justice and abuse of process of law. In the present petition, the respondent department has admitted in its reply that the departmental rules do not envisage a remedy of an appeal or revision to a higher authority, and the only remedy available to the petitioner is to submit a representation before the next higher authority in pursuance to the



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instructions issued by the Government of Haryana vide letter No. 9872-5GS-62/29821 dated 28.08.1962, subsequently circulated through letter No. 2029-5GS-69/9077 dated 08.05.1969.

37. Even otherwise, in circumstances where there is manifest injustice or the act giving rise to the writ petition in contrary to law, a writ Court may nonetheless entertain a writ petition notwithstanding any other alternative remedy. Besides, the writ petition has remained pending before this Court for nearly 04 years and it would rather be in the fitness of things at this stage to decide the lis rather than sending it back to submit any representation.

38. I am therefore, of the opinion that strictly speaking no alternative remedy under the statute is available to the petitioner, and assuming that the alternative remedy is available to her, the presence of statutory violation in the present dispute and the delay, it necessitates judicial intervention. The denial of due consideration for promotion, coupled with an unfair process that undermines transparency and meritocracy, vitiates the selection process and warrants the exercise of this Court's discretionary jurisdiction. Any action by the respondent department that contravenes these principles not only affects the petitioner's career progression but also erodes the integrity of administrative decision-making. Therefore, I deem it appropriate to intervene in the interest of justice.

39. It is a settled principle of law that merit is the criteria of seniority. Hon'ble Supreme Court in the matter of *Dharmendra Prasad &*



Ors. v. Sunil Kumar & Ors. reported as **(2020) 2 SCC 146** has observed as follows:

“17. We find that the method of giving appointment to the senior most person of each category is only a fortuitous circumstance as such appointments were made de hors the merit. Regulation 20 mandates the appointing authority to make the appointments from amongst the candidates in order in which they stand in the list prepared under Regulations 16(2), 17 or 18. Any appointment made by the Nigam in contravention of the statutory Regulations cannot defeat the rights of the appellants only because they have not challenged the appointment of their juniors at an earlier point of time. Regulation 23 provides that seniority of persons appointed in any branch of services shall be made as per substantive appointment. The appointment in Regulation 23 has to be read in terms of Regulation 20 mandating the manner of appointment. Therefore, irrespective of the date of appointment, the seniority has to be fixed as per the merit of the candidates determined by the Selection Committee.

(Emphasis Supplied)

40. Further, in the matter of **Suresh Chandra Jha v. State of Bihar & Ors.** reported as **(2007) 1 SCC 405**, the Hon’ble Apex Court observed as under:

“6. There is no dispute that the appellant was ranked higher to Respondent 8. There is also no dispute that in the appointment letter the appellant was given six weeks' time to join. Merely because Respondent 8 joined earlier that did not in any way affect the merit placement.



7. *This Court in Chairman, Puri Gramya Bank and Anr. v. Ananda Chandra Das and Ors., 1995(1) SCT 546 (SC) : 1994(6) SCC 301 held as follows :*

"This appeal arises from the Judgment of the High Court of Orissa in O.J.C. No. 1007/88, dated March 4, 1992. The respondent and others were selected by direct recruitment as managers of Rural Bank. His rank was No. 9 in the merit list. He was directed to be given seniority on the basis of the date of his reporting to duty. It is reported that the first respondent is dead. The only question in this case is that what shall be the ranking among the direct recruits? Is it the date on which they joined duty or according to the ranking given by the selection board? On comparative evaluation of the respective merits of the candidates for direct recruitment, the Board has prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court, is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis. The view, therefore, is wrong. However, we need not interfere with the order, since the first respondent has died."

(Underlined for emphasis)

8. *Since there was no rule in operation, obviously the ranking in the merit list was to decide the respective seniority.*



The ratio in Chairman, Puri Gramya Bank's case (supra) has full application to the facts of the case. Appellant's claim that he was to be treated as senior to the respondent No. 8 was rightly accepted by learned Single Judge. Unfortunately, the Division Bench did not address itself to the specific question and has placed undue stress on the respondent No. 8 having joined earlier.

41. In the aforesaid position in law, it would now be worthwhile to advert to the applicable service Rules i.e. the Haryana Revenue Department District Subordinate (Group-C) Service Rules, 1988. Rule 11 pertaining to the seniority reads thus:-

11. Seniority, inter se of members of the service shall be determined by the length of continuous service on any post in the service:

Provided that where there are different cadre in the service the seniority shall be determined separately for each cadre :

Provided further that in case of members appointed by direct recruitment, the order of merit determined by the Board, shall not be disturbed in fixing the seniority:

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

- (a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;*
- (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 by 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, than by their length of such service and if the length of service is also the same, the older member shall be senior to the younger member.*

Likewise, the departmental rules governing the promotion and qualifications to the post of Stenographer is also reproduced herein as under:-

- (i) *Three years experience as Steno-Typist.*
- (ii) *Pass Departmental type test in Hindi Shorthand at 80 words per minute and transcription thereof at 15 words per minute and English shorthand at 100 words per minute and transcription thereof 20 words per minute.”*

42. A plain reading of Rule 11 shows that in the matter of members appointed by direct recruitment, the order of merit determined by Board shall not be disturbed in fixing the seniority.

43. Undisputedly, the petitioner as well as private respondent were both recommended pursuant to the same result of the same advertisement.

and also that the petitioner was higher in the order of merit as against



respondent No.5. The language of the statute being mandatory and binding, the seniority has to be governed by order of merit prepared by the Commission and the said seniority cannot be breached or interfered with by allowing a mischief in joining.

44. Undisputedly, the private respondent joined on 29.07.2013 while the petitioner joined on 31.10.2013. The petitioner specifically pleaded that appointment letter was sent to her only on 30.10.2013 and that she was at no fault or delayed the joining. The specific pleading in Para No. 5 was not disputed by respondents No. 1, 2 and 4 while D.C. Biwani chose not to file any reply to deny the specific claim of the petitioner. Hence, the respondent themselves did not issue any appointment letter to the person who was at merit list No.1 in the select list and preferred to give joining first to the person lower in merit, more with a view to do violence with the Rule 11 and to defeat the statutory mandate. The pleading not being disputed, the respondent cannot cover up their tracks by alleging delay in joining to the petitioner. Surprisingly, the respondent have chosen to given precedence to the Rule prescribing length of continuous service as basis of seniority by completely ignoring the proviso, which is in an exception to the substantive Rule. Since both the petitioner as well as private respondent fall within the proviso, the seniority had to be governed by it. This Court finds it difficult to comprehend that the State had no acumen to understand the rules or was not sufficiently equipped to understand it. The only conclusion which flows hence is that it was a deliberate act. The fact that respondents have laid much stress on length of service to determine seniority shows that efforts were



being made to defeat statutory mandate by manipulating dates of appointment.

45. Adverting next to the argument about petitioner not qualifying the shorthand test and hence not eligible is concerned, the said objection would not hold much water. A specific pleading has been raised by petitioner in Para No. 7 to the effect that the respondent had been promoting steno-typist to Stenographer even without the departmental test and the same could be passed later. The respondent have not denied the said averment and have rather struck to the stand that its reply is not necessary since respondent was senior to her. The relevant part and its reply are extracted as under:-

“7. That the petitioner was every ready and willing to appear in departmental examination keeping in view her competency. She has also qualified SETC (State Eligibility Test in Computer Appreciation and Applications) Examination held on 09.10.2020 which is compulsory for many posts and promotions and the parameters of the same are very strict. Her certificate dated 12.11.2020 in this respect is annexed herewith as Annexure P-8. The private respondent has not qualified this so far. It is also necessary to state here that the exam of SETC has widen scope and comparatively high standard than the exam conducted by the official respondents for the promotional post. De-facto the competency of the petitioner is not in dispute. However, as per procedure adopted by the good offices of respondents till date most of the promotions made to the post of Stenographer from the post of Steno-Typist without conducting departmental examination. Although in the rule it is mentioned to pass the departmental



examination but it is not pre-condition. So, many promotion orders till date has mentioned the clause that within one year or any prescribed period the promoted candidate has to qualify the same after the promotion. It is another matter that the promotional increments may be implemented from the date of promotion after qualifying the test. Till date since inception no departmental exam conducted by the respondents of the Steno-Typists for the promotion of Stenographer before making the promotion and neither such kind of applications invited/sought by the respondents to conduct such examination including case of petitioner. The impugned rejection order also has a mention that as a rule of procedure such examination can be conducted after the promotion. It has also mentioned that even if the petitioner would qualify the exam in such eventuality also she cannot be considered for the promotion keeping in view the fact that her name recommended in the panel after the respondent No.5 keeping in view her joining.”

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That in reply to the contents of Para no. 7 of the writ petition, it is submitted that as per the Haryana government instructions issued vide No. 42/164/2008-3GSII dated 22.09.2017, the copy of the said letter is annexed as Annexure R-5 for kind perusal of Hon'ble High Court. SETC (State Eligibility Test in Computer Appreciation and Applications) is mandatory for being eligible for Group 'C' posts of clerks and in case of Group 'C' posts other than 'Clerks' the SETC is not applicable and therefore, the said SETC is not required in case of promotion from the post of Steno-Typist to the post of Stenographer. Regarding the rest of the contentions of the petitioner in this para wherein she has given instances of various previous promotions of the



employees imposing condition of passing the departmental stenography test within in one year, it is submitted that the above contention of petitioner is not relevant in the case of petitioner because in the present case the respondent no. 5 was senior to the petitioner and he had passed the departmental stenography test before his promotion and therefore, there was no ground to give promotion to the petitioner by imposing condition of passing the stenography test within specified times when the senior and qualified employee was available for promotion.

46. Hence, the plea about the respondent not insisting on passing of Stenography test before promotion remained uncontroverted.

47. Further, it is not the case of respondent department that the test was being conducted at any periodical interval for all employees. Instead, the specific stand is that as per practice, any employee could submit application for test at any time, on which exam was ordered to be conducted.

Relevant extract of reply to Para No.8 reads thus:-

“8. That in reply to the contents of Para No. 8 of the writ petition, the answering respondent No. 4 submitted that the contention of petitioner that the conduct of the official respondents in conducting the examination in respect of the petitioner and respondent No. 5 and in giving promotion to the respondent No. 5 shows mala-fide intention to defeat the legitimate and statutory right of promotion of the petitioner, is absolutely wrong and denied. In fact, as stated in the preliminary submissions, respondent no. 5 given his application for conducting stenography test on 02.09.2019 and he passed the



required test on 06.11.2019 whereas, the petitioner given her application for conducting stenography test on 02.12.2019 and she passed the test on 11.01.2021. The contention of the petitioner that the stenography test of petitioner was delayed by the official respondents with mala-fide intention, is wrong and baseless. In this regard, it is submitted that as per practice/custom as and when any employee (Steno-Typist) prepares to give stenography test and applies for the same, the competent authority orders to conduct the examination/test as per his discretion either at his office level or at the level of the concerned office of Deputy Commissioner. In the present case, when the respondent no. 5 applied for conducting test, the then competent authority i.e. Divisional Commissioner, Rohtak (Shri Pankaj Yadav) decided to conduct the exam/test in his presence whereas when the petitioner applied for conducting the test, the then competent authority i.e. Divisional Commissioner, Rohtak (Dr. D. Suresh) decided to get the exam/test conducted by Deputy Commissioner, Charkhi Dadri but on receipt of the information from Deputy Commissioner, Charkhi Dadri that no Stenography Instructor was available in the district, the principal, I.T.I., Rohtak was asked to get the test conducted and thereafter, the test could not be conducted due pandemic situation of Covid-19 and ultimately her test was conducted on 11.01.2021. The position has already been explained in the impugned order dated 18.02.2021 (Annexure P-6) passed by Respondent No. 2. Moreover the contention of the petitioner regarding delay in conducting her exam/test has no relevance/importance in present case because if the test of petitioner had been conducted on the date of her application i.e. on 02.12.2019 and if she had passed



the stenography test on the same day then also the petitioner could not have been considered for promotion because the respondent no. 5 was senior to the petitioner as per record and respondent no. 5 had passed the required stenography test much prior to the application of the petitioner for conducting the Test.

Regarding the contention of the petitioner in view of the Annexure P-14 to P-24 that some other officials were promoted to the post of Stenographer without taking Stenography Test/Exam and their Test/Exam was conducted later on after their promotion, it is submitted that as per Appendix 'B' under Rule-7 of the Haryana Revenue Department Divisional Subordinate (Group-C) Services (First Amendment) Rules, 2000 the provisions of Academic qualifications and experience, if any, for appointment to the post of Stenographer other than by direct recruitment are as under:-

- (i) Three years' experience as Steno-Typist in the Commissioner's/Deputy Commissioner's office of a Division.*
- (ii) Pass departmental type test in Hindi shorthand @ 80 words per minute and transcription thereof @ 15 words per minute and English shorthand @ 100 words per minute and transcription thereof @ 20 words per minute.*

Since there is no clarity in the above provision as to when the candidate should pass the departmental type, therefore, it is upto the competent authority to take decision as to whether the candidate is to be promoted subject to the condition of passing the type test within a limited period or the candidate is to be promoted after passing the type test. Accordingly, the officials mentioned in Annexure P-14 to 24 were promoted subject to the



condition of passing the prescribed test. The respondent no. 5 submitted his application for conducting the type test before his promotion and since he had passed the type test, the competent authority promoted him to the post of Stenographer in view of the above provisions of Rules and therefore, there was no reason/ground to promote the petitioner subject to the condition of passing the type test.”

48. Hence the specific case set up by respondent-department itself is that there was no clarity with the Department and hence, it was to the discretion of the competent authority whether to promote a candidate subject to a condition of passing the type test or is to be promoted after the passing of the type test.

49. Such a plea of defence is nothing more than an arrogant display of arbitrariness and discrimination. The competent authority derives its process from law and it has to be exercised lawfully and as prescribed by law. A uniformity and universality has to be followed for objectivity and transparency, which is completely amiss.

50. Even otherwise, even if such an argument is to be tested, the respondents were requested to consider the petitioner for promotion and then give reason why a conditional order of promotion is not being passed. There being no consideration at all, the defence become cryptic, arbitrary, illegal and hence unsustainable in the eyes of law.

51. Surprisingly, the respondent No.5 gave an application on 02.09.2019 and the exam is held within two months while the petitioner's application dated 02.12.2019 awaits the test till Jan 2021. The reasons given



for not holding of test itself fail to appear to reason. The follow up delay is then attributed to COVID 19 which comes after more than 3 ½ months of submission of application. The said aspect however need not to be gone into since the respondent do not dispute that people could be conditionally promoted even if they had not passed departmental exam, hence, non passing of the shorthand test was never the reason for denial of promotion to the petitioner. A reason cannot now be supplanted during the arguments when it was not the reason for denying the promotion. Similar stand is reiterated by the respondent in Para 11 of the reply as well which reads thus:-

“11. That regarding the contents of Para No. 11 of the writ petition, it is submitted that as stated in the preceding paras, respondent no. 5 Mohinder Kumar was offered appointment vide letter dated 26.07.2013 and he joined the office of Deputy Commissioner, Bhiwani on 29.07.2013 whereas the petitioner was offered appointment vide letter dated 30.10.2013 and she joined the post of steno-typist in the office Deputy Commissioner, Bhiwani on 31.10.2013 and as such respondent no.5 is senior to the petitioner. Regarding the contention of petitioner that the stenography test was not conducted for both i.e. petitioner and respondent no. 5, it is submitted that there is no provision and rules to conduct group examination/test and therefore, as per practice/custom as and when any employee (Steno-Typist) prepares to give stenography test and applies for the same, the competent authority orders to conduct the examination/test as per his desertion either at his office level or at the level of the concerned office of Deputy Commissioner.”

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52. Considering it from any of the above perspectives, petitioner was never even considered for promotion when her junior was promoted even though she had submitted an application for the test in December, 2019 i.e. much prior to promotion of respondent No.5.

53. Now referring to condition No. 2 in the letter of appointment dated 30.10.2013, the said condition being in violation of Rule 11 is illegal and cannot be accepted as laying seniority overriding the statutory rules.

54. Since, it is undisputed that the petitioner was at Serial No. 1 in the merit list prepared by the Haryana Staff Selection Commission while respondent no. 5 was ranked at Serial No. 3, despite this, the respondent authorities arbitrarily overlooked the merit list and promoted respondent no. 5 over the petitioner in direct contravention of the settled principle that seniority should be determined as per merit and not merely based on the date of appointment.

55. In light of the aforementioned findings, this Court holds that the promotion of respondent no. 5 to the exclusion of the petitioner is illegal, arbitrary, and unsustainable in law. Hence, the present writ petition is allowed and the impugned seniority list showing respondent No.5 as senior to the petitioner is hereby quashed. The respondent authorities are directed to appoint the petitioner to the post of Stenographer with all consequential benefits w.e.f. the date when respondent No.5 was promoted by the respondents within a period of 02 months of receipt of a certified copy of this order.

56. Furthermore, the conduct of the respondent department in deliberately acting in an illegal manner violating the Rules and thus



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depriving the petitioner of her legitimate right warrants the imposition of costs. The respondents are directed to pay a cost of ₹50,000/- to the petitioner towards mental harassment and litigation expenses as well.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 19, 2025
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No