
(2010) 04 P&H CK 0219
In the Punjab And Haryana At Chandigarh

M.K. Goyal

APPELLANT

Vs

Satish Kumar Sangwan and Others

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2010) 04 P&H CK 0219

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This Appeal filed under Clause X of the Letters Patent is directed against order dated 19.5.2009, passed by the learned Single Judge of this Court in CWP No. 4493 of 1995. The learned Single Judge has held that the appellant-respondent No. 3 could not have been given promotion from the post of Senior Scientific Officer to that of Assistant Director (Biology) in Forensic Science Laboratory Haryana, Madhuban, on the basis of the Draft Rules when the statutory rules held the field. In that regard, the learned Single Judge has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of Union of India through Government of Pondicherry v. V. Ramakrishna JT 2005 (9) SC 422.

2. The dispute in the instant appeal concerns the appellant-respondent No. 3 and respondent No. 1-petitioner. It would be profitable to first have a glance of some of the factual aspects. Shri Satish Kumar Sangwan, respondent No. 1-petitioner has passed his M.Sc. in Zoology in First Division from Kurukshetra University, Kurukshetra in 1979. On 9.12.1982, he joined as Scientific Assistant (Scene of Crime). On 11.7.1983, his designation was changed as Scientific Assistant (General). On 2.7.1984 he was directly appointed as Senior Scientific Officer (Serology) through the Haryana Public Service Commission. On the other hand, the appellant-respondent No. 3 is having the qualification of M.Sc. Hons. Botany and Ph.D. Botany. On 10.10.1980 he joined the Government Service as Senior

Scientific Assistant on ad hoc basis. On 16.11.1984, he was directly appointed as Senior Scientific Officer (Biology) through the Haryana Public Service Commission. In the Gradation List of Gazetted Officers of Forensic Science Laboratory, Haryana as it stood on 1.4.1993, the name of respondent No. 1-petitioner figures at Sr. No. 5 and that of the appellant-respondent No. 3 is at Sr. No. 9 (Annexure P-3).

3. The post of Senior Scientific Officer is a Group B post and is governed by the statutory Rules known as 'the Haryana Forensic Science Group B Service Rules, 1980' (for brevity, 'the Group B Service Rules?'). The posts of Senior Scientific Officers have been designated as under:

- a) Senior Scientific Officer Chemistry
- b) Senior Scientific Officer Physics
- c) Senior Scientific Officer Biology
- d) Senior Scientific Officer Serology
- e) Senior Scientific Officer Ballistics
- f) Senior Scientific Officer General
- g) Senior Scientific Officer Photography

4. In the hierarchy, the next post is that of Assistant Director, which is a Group A post and is governed by the statutory Rules, namely, 'the Haryana Forensic Science (Group A) Service rules, 1980 (for brevity, 'the Group A Service Rules?'). The posts of Assistant Director in the Service are designated as:

- a) Assistant Director (Chemistry)
- b) Assistant Director (Physics)
- c) Assistant Director (Biology)
- d) Assistant Director (Serology)
- e) Assistant Director (Ballistics)
- f) Assistant Director (Documents)

5. Respondent No. 1-petitioner filed CWP No. 4493 of 1995 challenging the order dated 15.3.1995 passed by the official respondents promoting the appellant-respondent No. 3 to the post of Assistant Director (Biology) in the Forensic Science Laboratory, Madhuban and sought the quashing of the same on the ground that the appellant-respondent No. 3 was junior to him in the cadre of Senior Scientific Officer as respondent No. 1-petitioner has been placed at Sr. No. 5 of the seniority list whereas the appellant-respondent No. 3 is at Sr. No. 9. As noticed above, the service conditions applicable to the post of Assistant Director (Biology) are regulated by the Group A Service Rules. According to Rule 9,

appointment or promotion is required to be made by seniority-cum-merit. Respondent No. 1-petitioner had also placed reliance on Appendix B to Rule 7 of the Group A Service Rules providing for educational qualifications/experience for promotion/appointment to the post of Assistant Director. He has also placed reliance on Rule 11 of the Group A Service Rules, which provide that seniority of the members would be determined by continuous length of service. Accordingly, on the strength of the aforesaid Rules, respondent No. 1-petitioner was placed at Sr. No. 5 of the seniority list of Senior Scientific Officer while the appellant-respondent No. 3 has been placed at Sr. No. 9.

6. The official respondents as well as the appellant-respondent No. 3 took the stand that in order to remove any ambiguity in the prescribed qualification, the State Government framed Draft Rules to clarify that all divisions like Chemistry, Physics, Ballistic, Serology and Biology etc. were separate specialties and were not inter-changeable. It was on the basis of the aforesaid micro classification made by the Draft Rules that promotion was given to the appellant-respondent No. 3 in preference to respondent No. 1-petitioner. The promotion order was dated 15.3.1995 (P-4) from the post of Senior Scientific Officer (Biology).

7. The learned Single Judge by placing reliance on the judgment of Hon^{ble} the Supreme Court rendered in the case of V. Ramakrishna (supra) has opined that the Draft Rules cannot be considered to have negated the statutory rules holding the field until and unless amendment is effected in accordance with the discipline of respective trade like Chemistry, Physics, Ballistic, Serology and Biology. The learned Single Judge did not accept the argument of the counsel for the appellant-respondent No. 3 based on an earlier Single Bench judgment of this Court, dated 31.10.1995 (Annexure A-1) rendered in the cases of Harsh Vardhan v. State of Haryana (C.W.P. No. 16475 of 1992) and Rajni Gandhi v. State of Haryana and Ors. (CWP No. 10990 of 1993). The view of the learned Single Judge in that regard is discernible from the following para of the impugned judgment, which reads as under:

Learned Counsel for the respondents has relied upon a decision of this Court in CWP No. 10990 of 1993 Rajni Gandhi v. State of Haryana and CWP No. 16475 of 1992, Harsh Vardhan of FSL v. State of Haryana and Ors. wherein this Court held as follows:

It is an expert organization which has to give precise report after a scientific and technical examination of the subject matter. For this purpose, it is not enough that the candidate fulfils the academic qualifications, he must also have experience in the particular branch in which he seeks appointment or promotion. The obvious purpose is that he would have actually worked on the post.

The specifications are the same as in case of group C services, consequently whatever has been said with regard to the posts in group C service, is applicable to posts in group B service. In view of the above, I find no merit in these two petitions which are dismissed.

It was also observed that "I cannot persuade myself to hold that merely because the respondents have ordered certain promotions which are not in strict conformity with the rules, a writ of mandamus should be issued and the mistake be repeated.

In my opinion this judgment is clearly distinguishable since it relates to the promotion from the post of Laboratory Assistant to the post of Scientific Assistant and not to Group A posts.

8. Mr. Rajiv Atma Ram, learned senior counsel for the appellant-respondent No. 3 has argued that the learned Single Judge has committed a grave error in law by refusing to accept the view taken by this Court in the cases of Rajni Gandhi and Harsh Vardhan (supra). According to the learned Counsel, the learned Single Judge could not have distinguished the earlier judgment of this Court in Harsh Vardhan's case (supra) [Annexure A-1] by expressing the opinion that promotion in those cases related from the post of Laboratory Assistant to that of Scientific Assistant, whereas the dispute in the present case is with regard to promotion to the post of Assistant Director which is a Group-A post. He has drawn our attention to the aforesaid judgment (Annexure A-1) and argued that the last two paras of the judgment would show that the post of Senior Scientific Officer (Physics) was also the subject matter of dispute and the recruitment to the aforesaid posts was governed by the Group B Service Rules. According to the learned Counsel, the import of the judgment clearly reveals that all divisions are separate in respect of various disciplines like Chemistry, Physics, Ballistic Serology and Biology and they are not interchangeable. Learned Counsel has maintained that a person and incumbent working on the post of Senior Scientific Officer (Biology) could only be considered for promotion to the post of Assistant Director (Biology) and since respondent No. 1-petitioner belong to the discipline of Zoology, he could not have been considered for promotion to the post of Assistant Director (Biology), as per the judgment of this Court. He has further submitted that the Draft Rules have been completely misconstrued by the learned Single Judge, which are merely instructions to fill up the gap. He has drawn our attention to the new rules, which have been enforced by the notification on 11.8.2003 (A-2), accepting separate divisions based on the respective disciplines prevailing in the department such as Physics, Chemistry, Ballistic, Serology and Biology. In that regard, reference has been made to the Draft Rules. He has also placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of Sant Ram Sharma v. Union of India 1967 SLR 906 (SC), and argued that the instructions issued to fill up the gap in the Rules would not deem to be amendment in the Rules. Such like instructions are supplemental to the Rules and not to supplant the Rules. Therefore, instructions cannot be construed as the Rules. There is, thus, no violation of any rule. The submission of the learned Counsel is that had it been in accordance with seniority then according to para 14 of the written statement, filed by the official respondents, all other persons senior to respondent No. 1-petitioner like Sarvshri J.S. Gujral, S.K. Shukla and Gulshan Rai working as Senior Scientific Officers

would become entitled to be considered. Our attention has been drawn to the gradation list as on 1.4.1994 (P-3).

9. Ms. Ritu Bahri, learned State counsel has supported the line of argument advanced by the learned Counsel for the appellant-respondent No. 3 and has submitted that the seniority in the cadre is maintained division-wise based on the discipline dealt by the respective divisions. According to the learned Counsel there are 8 different divisions and three Sections in the Forensic Science Laboratory. Each division is headed by an Assistant Director and each Section is headed by a Senior Scientific Officer. She has drawn our attention to the averments made in para 3 of the written statement filed by respondent Nos. 1 and 2 (in the writ petition) to assert that each discipline/division has a separate cadre and separate seniority. The posts in the different disciplines are neither inter-changeable or transferable and the seniority is maintained in each division upto the post of Assistant Director. Accordingly, the appointment of Assistant Director by promotion in Biology could be made only by promoting an officer who is working as a Senior Scientific Officer (Biology). It has, thus, been justified that the order of the State, dated 15.3.1995, promoting Shri M.K. Goyal, appellant-respondent No. 3, did not suffer from any legal infirmity. She has emphasised that respondent No. 1-petitioner has been working on the post of Senior Scientific Officer in the specialty of Serology and accordingly he could not have been considered for promotion to the post of Assistant Director (Biology).

10. Mr. Akshay Bhan, learned Counsel for respondent No. 1-petitioner has vehemently argued that he has been working on the post of Senior Scientific Officer (Serology) since 2.7.1984. According to the learned Counsel there is not only one seniority list maintained by the official respondents, as is evident from the perusal of gradation list (P-3). In the aforesaid list respondent No. 1-petitioner figures at Sr. No. 5 whereas the name of the appellant-respondent No. 3 figures at Sr. No. 9. For all intents and purposes respondent No. 1-petitioner is senior to the appellant-respondent No. 3. He has then maintained that under the Rules no separate seniority or cadre is contemplated and an effort was made to apply the draft rules, which is wholly un-warranted. Such rules cannot be considered as departmental instructions to fill up the gaps. In any case, new rules came into force vide notification dated 11.8.2003 (A-2 Colly) and, thus, could not be applied to the promotions made in the year 1995. Mr. Bhan has drawn our attention to the averments made in paras 18 to 21 of the writ petition showing the data from 1969 to 1993 when the Serology Division and Biology Division have been dealing with the inter-departmental cases. His submission is that the Biology Division has been dealing with the cases of Serology and vice-versa. In that regard he has drawn our attention to Annexures P-9 to P-16 added with the replication. He has also drawn our attention to the averments made in para 22 showing as to how persons belonging to different disciplines were promoted as Assistant Director of another discipline. He has mentioned the name of Shri K.P.S. Kushwaha, Scientific Assistant (Serology) who was promoted as Senior Scientific Officer (Biology). Thereafter he was promoted as Assistant

Director (Serology).

11. After hearing learned Counsel for the parties and perusing the record it would be imperative to first examine the Group B Service Rules. Rule 11 deals with seniority and postulate that inter-se seniority of members of service is to be determined by length of continuous Service on any post in the service. Rule 3 illustrate that the Service is to comprise the posts shown in Appendix ?A?. According to Appendix ?A? there are 7 posts of Senior Scientific Officers. It is significant to notice that Rule 11 read with Rule 3 and Appendix ?A? do not postulate any further sub-classification for the post of Senior Scientific Officer either for the purposes of seniority or for the purposes of promotion. Rule 3 alongwith Appendix ?A? and Rule 11 of the Group B Service Rules are reproduced hereunder for facility of reference:

Group B Service Rules

3. The service shall comprise the posts shown in Appendix A to these rule;

Provided that nothing in these rules shall affect the inherent right of the Government to make additions to or reduction in the number of such posts or to create new posts with different designations and scales of pay, either permanently or temporarily.

Appendix A (See Rule 3) Designation Number of posts Scale of Pay of Posts
Permanent Temporary Total

Senior .. 1 6 7 Rs. 600-35-740/ Scientific 40-1,100 Officers

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 in the cases of members appointed by direct recruitment, the order of merit determined by the Commission, shall not be disturbed for 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 then by the length of their service in the appointments, and if the length of such service is also the same, the older member shall be senior to the younger member.

12. It is, thus, evident from the perusal of the aforesaid Group B Service Rules that no separate cadre of Senior Scientific Officers with reference to their specialty or division is contemplated for the purposes of seniority. Accordingly, it has to be concluded that the seniority list as on 1.4.1993 (Annexure P-3) showing Shri Satish Kumar Sangwan, respondent No. 1-petitioner, at Sr. No. 5 and Dr. M.K. Goyal, appellant-respondent No. 3, at Sr. No. 9, has been framed in accordance with Rule 11 read with Rule 3 Appendix A of the Group B Service Rules. Even otherwise, respondent No. 1-petitioner has entered into Service as Senior Scientific Officer in the year 1984 whereas the appellant-respondent No. 3 has joined as such in the year 1986.

13. For promotion to the post of Assistant Director, Group A Service Rules have been enforced. According to Rule 7, for appointment to any post shown in Appendix ?A?, a person has to possess qualifications and experience as per the requirement of Appendix ?B?. For promotion to the post of Assistant Director (Biology), the essential qualifications are M.Sc. degree in Zoology, Botany, Human Biology, Anthropology (Physical) and Bio-Chemistry alongwith five years experience as Senior Scientific Officer. It would be imperative to read Rule 7 with Appendix ?B? of the Group A Service Rules, which is as under:

Group A Service Rules

7. No person shall be appointed to any post in the Service, unless he is in possession of qualifications and experience specified in Appendix B to these rules.

Appendix B

(See Rule 7) ----- Serial
Designation Academic qualifications For appointment No. of post and experience.
For by promotion appointment by direct recruitment/by transfer of an official
already in service in any other Department/or any State Government/
Government of India _____

	1	2	3	4
-----			1. to 3	XXX XXX
XXX -----			4.	Assistant
-- Essential:	M.Sc. degree in	Director (i)	M.Sc. 2nd class	any subject i.e.
(Biology)	degree in any of the	Zoology, Botany,	subjects i.e.	Zoology, Human
Biology, Botany,	Anthropology	Anthropology (Physical),	Human (Physical),	Bio-
Biology, Bio-Chemistry	Chemistry.	from a recognized	Five years service	University or as Senior Scientific equivalent;
Officer (ii)	7 years experience of	analytical and	research work in any of	above subjects
5 to 7	XXX XXX XXX			

14. A perusal of the aforesaid Rule 7 as well as Appendix B of the Group A Service Rules would show that for promotion to the post of Assistant Director no

person could be appointed unless he answers the qualifications and experience specified in Appendix B. Accordingly, it has been provided by Appendix B that for promotion to the post of Assistant Director (Biology), M.Sc. degree in any subjects i.e. Zoology, Botany, Human Biology, Anthropology (Physical) and Bio-Chemistry is required along with five years experience as Senior Scientific Officer. Respondent No. 1-petitioner has acquired the qualification of M.Sc. in Zoology in First Division from Kurukshetra University, Kurukshetra in the year 1979. He was directly appointed as Senior Scientific Officer in Serology through the Haryana Public Service Commission on 2.7.1984. It follows that he answers the educational qualification as well as the requirement of experience in 1995. Therefore, it cannot be said that he was not eligible for promotion to the post of Assistant Director merely because he was working as Senior Scientific Officer (Serology) because there is no independent cadre of Senior Scientific Officer Biology and Serology. A casual glance of Rule 7 read with Appendix B of the Group A Service Rules would show that Senior Scientific Officer Biology and Serology are qualified if they have M.Sc. degree in Zoology, Botany, Human Biology, Anthropology (Physical) and Bio-Chemistry. Both respondent No. 1-petitioner and the appellant-respondent No. 3 answer those qualifications.

15. The aforesaid interpretation is also strengthened by un-controverted stand taken by respondent No. 1-petitioner in para 3 of the replication on merit. In the aforesaid para, respondent No. 1-petitioner has placed on record the yearly reports of Biology and Serology Divisions from the year 1986 to 1993 (Annexures P-9 to P-16) which clearly depicts that respondent No. 1-petitioner has been working in Biology also alongwith Serology and the appellant-respondent No. 3 has also been working in Biology and Serology both after his appointment. It appears that the authorities framing the rules were conscious of limited number of posts and the fact that there was no higher post for various incumbents working in Group B Service. Accordingly, avenues from one branch to another were kept open to all qualified members except in the specialization of Photography. A perusal of the yearly report for the year 1986 in respect of Biology and Serology Division shows that the appellant-respondent No. 3 has dealt with 181 cases of Biology and 128 cases of Serology, which makes it 309 cases. Likewise, respondent No. 1-petitioner had dealt with 164 cases in Biology and 150 cases in Serology. Both of them have acquired experience on both sides, which substantiates the logic that avenues of promotion for limited number of Group B posts were kept open for everyone so that they may be advanced. This is further substantiated by the fact that the rule of seniority in both the Services is continuous length of service and the service has been defined to comprise the post of Senior Scientific Officer in Group B Service Rules. The aforesaid has also been accepted as a consistent practice adopted by the respondents. In para 22 of the writ petition it has been stated that Shri K.P.S. Kushwaha, who was working as Senior Scientific Officer (Biology), was promoted as Assistant Director (Serology). Likewise no specialization has been kept in view when persons who are promoted to the post of Senior Scientific Officers. For example, Shri S.K.

Nagpal, who was working as Senior Scientific Assistant (Ballistics) was promoted as Senior Scientific Officer (General) on 6.5.1992 (Annexure P-8). Likewise, Shri K.P.S. Kushwaha, who was working as Senior Scientific Assistant (Serology), was promoted as Senior Scientific Officer (Biology). The list have many names which can be seen in para 22.

16. The argument of the learned Counsel for the appellant-respondent No. 3 that the judgment of the learned Single Judge of this Court in the cases of Rajni Gandhi and Harsh Vardhan (*supra*) also dealt with the post of Senior Scientific Officer (Physics) would not require any detailed consideration because in those cases there was no dispute with regard to promotion to the post of Assistant Director. It may be true that the learned Single Judge was dealing with the post of Senior Scientific Officer (Physics), which is a Group B post and is obviously governed by the statutory Rules of 1980. In any case, the question which falls for consideration in the present appeal was not the question posed by the learned Single Judge. Therefore, we hold that the aforesaid judgment is not applicable to the facts of the present case.

17. The other argument based on the judgment of Hon^{ble} the Supreme Court in Sant Ram Sharma's case (*supra*) would also not require any detailed consideration because the Draft Rules cannot be regarded as executive instructions particularly in the presence of prevailing statutory rules framed under the proviso to Article 309 of the Constitution. It is evident that the Group A Service Rules or Group B Service Rules do not differentiate between the Senior Scientific Officer and Assistant Director (Serology) on the one hand and Senior Scientific Officer and Assistant Director (Biology) on the other hand. The Draft Rules cannot be permitted to replace the statutory rules as has been rightly held by the learned Single Judge by placing reliance on the judgments of Hon^{ble} the Supreme Court rendered in the cases of Dr. Rajinder Singh Vs. The State of Punjab and Others, and V. Ramakrishna (*supra*). If the argument advanced by the learned Counsel for the appellant-respondent No. 3 is accepted then it would result into replacing the draft rules with the statutory rules. The fact that the amendment which was proposed by the draft rules eventually was notified on 11.8.2003, but the amendment has not been made with retrospective effect. Accordingly, it would not apply to the promotions made in the year 1995.

18. As a consequence, the appeal fails and the conclusion reached by the learned Single Judge is approved substituting the reasoning given in this order.