

(2020) 08 SHI CK 0241
In the High Court Of Himachal Pradesh
Case No : Review Petition No. 6 Of 2020

Ram Swaroop Verma

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 07-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 14
Demobilized Armed Forces Personnel (Reservation Of Vacancies In Himachal Pradesh
State Non Technical Services) Rules, 1972 — Rule 3

Citation : (2020) 08 SHI CK 0241

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Ramesh Kaundal, Ashok Sharma, R.P. Singh, Seema Sharma, Vikrant Thakur

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

Review Petition No. 6 of 2020.

1. By medium of this petition, the petitioner has sought review of the judgment dated 18.10.2010 passed by this Court in CWP-T No. 2546 of 2008.

2. The petitioner had approached the Administrative Tribunal for quashing the rules governing selection to the post of Under Secretary in the

Himachal Pradesh Public Service Commission on the ground that they were unconstitutional and granted an unfair advantage to the junior officers for

consideration to this post, thus, stealing a march over senior officers.

3. The petitioner joined the Commission in August, 1972, as a Stenographer and was promoted as a Personal Assistant in the year 1983 and thereafter

as Private Secretary on 11.01.1998. In the interregnum, he was promoted as

Additional Registrar on adhoc basis on 01.09.1997 and Registrar on adhoc basis on 31.10.1997 and Registrar on regular basis on 08.06.1998.

4. The private respondent, on the other hand, was promoted as Additional Registrar on 31.10.1997 and the claim of the petitioner against him was that being Senior, he could not have been ignored and consequently promotion of respondent No.3 was assailed being illegal.

5. It was contended by the petitioner that in case a senior person is ineligible, then the junior will be considered to be ineligible and this contention was upheld by observing as under:

4. In order to substantiate his plea, petitioner relies upon a decision of the Supreme Court in *Shakuntala Sharma vs. High Court of Himachal Pradesh*, (1994) 2 SCC 411 in support of this proposition.

5. The fact is that on the day when respondent No.3 was promoted as Under Secretary, the petitioner did not have three years experience as

Registrar. It is in this context that the decision in *Shakuntala's* case supra was relied upon, more especially, the interpretation of the Rules by the

Supreme Court holding that the Rule is unconstitutional. The Court holds:-

9. The result of the rule was that since the appellant had not put in three years' service as Revisor, she was disentitled to the post of

Superintendent. The position further was that on the relevant date, i.e., 3/12/1992, there was no Deputy Superintendent or Revisor with minimum three

years' service in the respective posts. Hence the post was given to Respondent 2, as he was Senior Assistant with more than six years' service. The

consequence of the rule was that had she continued as Translator, being senior to Respondent 2, she would have got the post of the Superintendent.

She lost the same because she was promoted to the post of the Revisor only a few days earlier to the appointment of Respondent 2 to the post of the

Superintendent which in effect was a double promotion to him. Since the two events, viz., her promotion to the post of Revisor and that of Respondent

2 to the post of Superintendent were close in proximity, a legitimate contention was advanced on her behalf that she was "kicked up" to the post of the

Revisor only to facilitate the promotion of Respondent 2 to the post of the Superintendent and thus to deny her the said post.

10.... .. 1

11. What is pointed out to us on behalf of the respondent-High court, is that the said Rule 10 had become necessary because there were more Deputy Superintendents than Revisors and the Senior Assistants and Translators were stagnated for want of a promotional post. Hence the said rule was framed by a Committee of Judges to provide suitable avenues of promotion to both Deputy Superintendents and Revisors on the one hand, and Senior Assistants and Translators on the other. It was also pointed out that even the earlier Rule 11 of the 1990 Rules was almost on the same pattern. In fact, by the said earlier rule, all graduate court employees who had put in minimum of six years' service in the grade of not less than Rs.1800- 3200 were eligible on merit for promotion to the post of the Superintendent. Under the 1990 Rules, therefore, all Senior Assistants and Translators as well as Deputy Superintendents and Revisors were eligible for being considered on merit for promotion to the post of Superintendent. The only two differences which the 1992 Rules brought about in the earlier situation were that they provided firstly, that the Deputy Superintendents and Revisors who carried the pay scale of more than Rs.1800-3200 with a minimum of three years' service, were eligible to the post of Superintendent and it is only failing the availability of the eligible candidates from the said two categories, that the Senior Assistants and the Translators should be considered for the said post. Secondly, a proportion between Deputy Superintendents and Revisors was laid down for promotion to the post of the Superintendent.

12. In this case, it is not necessary for us to go into the question whether Rule 11 of 1990 Rules which provided for the promotion to the post of the Superintendent was valid or not. Even assuming that the validity of the 1990 Rules was not challenged, that fact by itself would not validate the present Rule 10 if it suffers from an inherent infirmity. The basic weakness in the present Rule 10 is that it places two unequal sets of posts on a par with each other and also prescribes qualifying service for the higher post as well. The posts of Deputy Superintendents and Revisors admittedly are posts higher than those of Senior Assistants and Translators respectively. If the incumbents of both the sets of posts are to be made eligible for promotion to the post of Superintendent, no qualifying period of service can be prescribed for the incumbents of the posts of Deputy Superintendents and Revisors. If Senior Assistants and Translators are to be provided with promotional avenue, more posts of Deputy Superintendents and Revisors

which are above the posts of Senior Assistants and Translators respectively, should be created, and first the Senior Assistants and Translators have to

be promoted to the said posts. In fact, the appellant who was a Translator was first promoted to the post of Revisor. We are informed that no eligible

Deputy Superintendent was available for being considered to the post of Superintendent and hence Respondent 2 who was holding the post of Senior

Assistant (post below that of Deputy Superintendent) had to be promoted to the said post as he had put in six years' service as required by the said

Rule 10. Rule 10 of the 1992 Rules is thus inequitous and indefensibly unjust. It violates Article 14 of the Constitution since it treats unequals as equals

and what is more gives unwarranted advantage to the incumbents of the lower posts over the incumbents of the higher posts.

13. We, therefore, strike down Rule 10 of the 1992 Rules and direct the High court to frame an equitable rule for promotion to the post of

Superintendent in place of the said rule.â??

(pp-414-415)

6. Looking into the entirety of the facts and circumstances of the case, I do not think that it would be necessary to hold that the Rule is to be struck

down as being violative of Article-14 of the Constitution of India. Clause-11 of the Rule is in three parts contains three proviso. It reads:-

â??11. In case of recruitment by â??By promotion from amongst the promotion, deputation, transfer Registrar having three years grade, from which

promotion/ regular service or regular deputation/transfer is to be made combined with continuous adhoc (rendered upto 31.3.1991) in the grade, failing

which by promotion from amongst the Registrar having five years regular service or regular combined with continuous adhoc (rendered upto

31.3.1991) as Registrar and Section Officer/ Assistant Registrar combined failing both by promotion from amongst the Section Officer/Assistant

Registrar having six years regular service or regular combined with continuous adhoc (rendered upto 31.3.1991) service in the grade.

(1) In all cases of promotion, the adhoc service rendered in the feeder post upto 31.3.1991, if any, prior to regular appointment to the post shall be

taken into account towards the length of service as prescribed in these Rules for promotion subject to the condition:-

(i) that in all cases where a junior person becomes eligible for consideration by

virtue of his total length of service (including the service rendered on
ad hoc basis up to 31.3.1991) in the feeder post in view of the provisions referred
to above, all persons senior to him in the respective category/

post/cadre shall be deemed to be eligible for consideration and placed above the
junior person in the field of consideration;

Provided that all incumbents to be considered for promotion shall possess the
minimum qualifying service of at least three years or that prescribed in

the Recruitment and Promotion Rules for the Post, whichever is less;

Provided further that where a person becomes ineligible to be considered for
promotion on account of the requirements of the proceedings proviso, the

person(s) junior to him shall also be deemed to be ineligible for consideration for
such promotion.

Explanation:- The last proviso shall not render the junior incumbents ineligible
for consideration for promotion if the Senior ineligible persons happened

to be ex-] servicemen recruited under the provisions of Rule-3 of Demobilized
Armed Personnel (Reservation of Vacancies in Himachal State Non-

Technical Services) Rules, 1972 and having been given the benefit of seniority
thereunder or recruited under the provisions of Rule-3 of Ex-

Servicemen (Rule-3 or ex- servicemen (Reservation of vacancies in the Himachal
Pradesh Technical Services) Rules, 1985 and having been given

the benefit of seniority thereunder.

(2) Similarly, in all cases of confirmation ad hoc service rendered on the feeder
post upto 31.3.1991, if any, prior to the regular appointment against

such post shall be taken into account towards the length of service;

Provided that inter-se- seniority as a result of confirmation after taking into
account, ad hoc service rendered upto 31.3.1991 shall remain unchanged.â??

7. The second proviso to the Rule is clear and unambiguous when it provides that
in case a senior person is ineligible a junior will also be considered to

be ineligible. This is the plain and simple meaning to the Rule as the explanation
is not applicable for the reasons that it applies to ex-servicemen

governed by a separate set of Rules governing their Recruitment and
Promotion.â??

6. On the other hand, the private respondent had contested that Clause-1
controls the second proviso that it is combined ad hoc and regular service

which is to be counted for the purpose of promotion and it is only in that event

that the case of eligibility/ineligibility of a junior or senior is to be considered. However, this contention was rejected by this Court by observing as under:

9. I do not see as to how this interpretation can be placed on the Rule. A plain reading of the second proviso makes it absolutely clear and provides in no uncertain terms that reference is made to eligibility/ineligibility on account of the requirements of the preceding proviso. The law on interpretation is settled that the Rule must be interpreted on the plain language in which it is drafted unless it can be established on the record that some other intention appears which I do not find on the record of this case. Thus, considered the rule is clear that where a senior is ineligible because of the necessary experience the junior would also become ineligible.

10. Looking to the facts in the present case, I find that respondent No.3 is in fact junior to the petitioner. In these circumstances, the second proviso should have been applied before any promotion is made to the post of Under Secretary.

7. It would be noticed that even though all the contentions of the petitioner were upheld, but no relief was granted to him, as is evident from paragraph-11 of the judgment which reads as under:

11. It has been urged that respondent No.3 has since been superannuated from service this order shall not govern his rights. In other words his promotion, made during the pendency of this petition, shall not be disturbed and neither shall it have any effect on the promotion so made entitling him to retiral benefits etc. This petition is disposed of. No order as to costs.

8. It is in this background that the petitioner has filed the review petition.

9. I have heard the learned counsel for the parties.

10. It is more than settled that power of review can be exercised for correction of mistake, but not to substitute a view. However, what can be disputed and is otherwise universally accepted is that "To err is human and none is infallible".

11. Once, the contentions of the petitioner had been accepted, there was no reason or basis for dismissing the petition and the same had to be allowed.

In case some indulgence has been shown to the private respondent, the same could not have been at the cost of the petitioner.

12. Consequently, I find merit in this review petition and the same is accordingly allowed and the judgment is ordered to be reviewed and recalled. The

Civil Writ Petition is ordered to be restored to its original number.

CWP-T No.2546 of 2008.

13. Heard. In view of the detailed discussions in the preceding paras, para-11 of the judgment dated 18.10.2010 in this petition is ordered to be

substituted as under:

Consequently, the petition is allowed. The respondents are directed to review the decision of DPC held on 06.06.1998 for the post of Under Secretary

and after applying the second proviso of the rules consider the petitioner for promotion to the post of Under Secretary with effect from 31.10.2000.

The respondents are further directed to review the decision of DPC held in January, 2002 on the basis of which respondent No.3 was promoted as

Deputy Secretary and the petitioner be considered for promotion to the post of Deputy Secretary with effect from 01.09.2002 when he was eligible

for promotion on completion of required service as Under Secretary in accordance with the Recruitment and Promotion Rules. The consequential

actual benefits including revision of retiral benefits are granted in favour of the petitioner.

14. Accordingly, the writ petition is disposed of in the aforesaid terms.