

CASE NO.:
Appeal (civil) 3874 of 2001

PETITIONER:
Inder Jeet Khurana

\005 Appellant

RESPONDENT:
State of Haryana & Ors.

\005 Respondents

DATE OF JUDGMENT: 01/02/2007

BENCH:
G P Mathur & R V Raveendran

JUDGMENT:
J U D G M E N T
(With CA Nos.3875 and 3876/2001)

RAVEENDRAN, J.

These appeals by special leave are against the judgments dated 16.12.1994 in C.W.P. No.337/1994, CWP No. 14702/1992 and CWP No.16236/1992 respectively of the Punjab & Haryana High Court.

2. Appellants, who were working as Zileedars in the Irrigation Department, in the State of Haryana, filed the said writ petitions for quashing the recruitment by 'transfer' of Zileedars - Ashok Kumar Gaur, Sant Lal Pachar and Bhagwan Dass, as B-Class Tehsildars, vide order of appointment dated 21.10.1992. The appellant in C.A. No.3874/2001 has in addition challenged the recruitment 'by transfer' of Brij Bhushan, Jatinder Kumar, and Mam Chand as 'B' Class Tehsildars.

3. The Haryana Revenue (Group/B) Service Rules, 1988 (for short 'the Rules') govern the recruitment to Revenue Group-B Service consisting of District Revenue Officers and Tehsildars. Rule 9 relates to method of recruitment. Clause (b) of Rule 9(1) provides that in the case of Tehsildars, recruitment to the service shall be : (i) 40% by direct recruitment (selected by PSC on the basis of a Service Examination); (ii) 40% by promotion from amongst Naib Tehsildars; and (iii) 20% by transfer from amongst :

- (i) Superintendents of the office of the Deputy Commissioners;
- (ii) Assistant Superintendents of Commissioners and Deputy Commissioners' offices;
- (iii) District Kanungoes;
- (iv) Zonal Zileedars of P.W.D. (Irrigation Branch), or
- (v) Head Assistants of Director Land Records Office."

Sub-rule (2) provides that appointment by promotion shall be made on seniority-cum-merit.

4. Rule 7 relates to qualifications and provides that no person shall be appointed to any post in the service, unless he possesses the qualifications and experience specified in column 3 of Appendix B to the Rules in the case of direct recruitment, and those specified in column 4 of the aforesaid Appendix in the case of persons appointed other than by direct recruitment. Column 4 of Appendix B prescribes the following experience for appointment to the post of 'Tehsildar' by promotion and transfer :

(1) By promotion :

Five years experience as Naib-Tahsildar and who has qualified in departmental examination of Tahsildar

(2) By transfer :

One year experience as Superintendent in the Deputy Commissioner's Office; or

Five years experience as Assistant Superintendent in Commissioner's or Deputy Commissioner's Offices; or

Five years experience as District Kanungo; Or

Five years experience as Canal Zileedars of P.W.D. (Irrigation Branch); or

Five years experience as Head Assistant in Director Land Record's Office, Haryana."

Rule 18 provides that where the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax any of the provisions of the Rules with respect to any class or category of persons.

5. By communication dated 10.9.1991, the Financial Commissioner, who is the appointing authority for the posts of Tehsildar, informed the Engineer-in-Chief, Irrigation Department, that he proposes to select three Tehsildars by way of transfer and requested him to recommend the names of suitable and eligible officials of the age upto 50 years and also send their confidential personal files and service books. (He also sent such requisition to the Heads of Department of other eligible categories). In response to it, the office of the Engineer-in-Chief, Irrigation Department, by letter dated 6.11.1991 recommended the names of 39 Zileedars, including Ashok Kumar Gaur, Sant Lal Pachar and Bhagwan Dass (who were selected), and the three appellants (who were not selected).

6. The State Government determined the ratio for sharing the vacancies as 50% for Zileedars from Irrigation Department and 50% for other four categories. The State Government also constituted a Three Member Committee consisting of Commissioner, Ambala Division as Chairman and Joint Secretary, Revenue and Director, Land Records as members, for recommending the names of suitable candidates for appointment as 'B' Class Tehsildars from the category of officials specified in Rule 9(1)(b)(iii) by transfer. The government also fixed the following procedure for ascertaining the merit : maximum 75 marks for evaluation of five latest Annual Confidential Reports, and 25 marks for interview (overall suitability), in all 100 marks. It was decided that the marks for Confidential Reports, would be calculated by assigning 15, 12.5 and 10 marks per year, respectively, for the grading of 'outstanding', 'very good' and 'good' in the ACRs. The Committee decided on the following break-up for assigning the interview marks : 5 marks for academic qualification, 5 marks for outstanding achievement in sports and other extra curricular activities, 5 marks for service experience and 10 marks for general knowledge, knowledge of Revenue work and working of Revenue Department.

7. The computation of marks for ACRs, being a mechanical exercise of Tabulation, the Committee directed the office of the Financial Commissioner to prepare the same. The Committee held interview and submitted a Report dated 24.8.1992 enclosing therewith the award list of interview marks. Thereafter, final consolidated marks list was prepared. We extract below the marks of the selected candidates and the appellants from out of the said list :

S.No. in
the list
Name
(all Ziledars)
Marks
for ACR
Marks for overall
suitability
Total

43
Ashok Kumar Gaur

62.5
8
70.5
12
Sant Lal Pachar

55
14
69
18
Bhagwan Dass

57.5
9
66.5
7
Ram Chander Malik
(Appellant)
52.5
7
59.5
4
Inderjit Khurana (Appellant)

43.75
8
51.75
30
Jai Narayan (Appellant)

40
11
51

[Note : Where there are two ACRs. for one year, showing very good and good, the average of the two, namely, 11.75 was assigned for the year.]

The Financial Commissioner accepted the merit list and appointed Ashok Kumar Gaur, Sant Lal Pachar and Bhagwan Dass, who received the highest marks among Ziledars, as Tehsildars by order/memo dated 21.10.1992. The said appointments were challenged by the appellants in the three writ petitions. The High Court found no infirmity in the selection of the said three candidates by assessing the inter se merit of the candidates. Consequently, the High Court dismissed all the three writ petitions.

8. The rejection of the writ petitions is challenged in these appeals. The following four contentions are urged by the appellants :

(i) The criteria for transfer from the post of Ziledars in the Irrigation

Department to the post of Tehsildars in the Revenue Department under Rule 9(1)(b)(iii) should have been seniority-cum-merit and not merit.

(ii) The appointment to the posts of Tehsildar by transfer under Rule 9(1)(b)(iii) should be made by preparing a consolidated seniority list of all eligible candidates in the five categories of posts referred to in Rule 9(1)(b)(iii) and thereafter the required number should be taken purely according to seniority. Division of 50% vacancies for Zileedars and remaining 50% for other four categories, was done by the Committee and was unauthorised.

(iii) In the case of Jai Narain (Appellant), the procedure of selection was vitiated on account of considering only four Annual Confidential Reports (for short the 'ACRs') instead of considering five ACRs as in the case of selected candidates for assigning marks. Further the ACRs of some other candidate with the same name were considered instead of considering his ACRs. Lastly, the marks for interview (overall suitability) were not properly calculated in his case.

(iv) The selection of Jitender Kumar and Mam Chand (Asst. Superintendents) was bad as that they did not fulfil the minimum experience criteria.

Points (i) and (ii) are common to all appeals. Point No. (iii) relates to CA No.3876/2001. Point No. (iv) arises only in C.A. No.3874/2001.

Re : Contention (i)

9. The appellants contended that transfer from the post of Zileedar (class-III post) to the post of Tehsildar (class II post) involved advancement to a higher position with a higher scale of pay and, therefore, it amounted to promotion. It was next submitted that as the transfer was, in effect, promotion, such transfer could be only on the basis of seniority-cum-merit and not on the basis of merit, having regard to Rule 9(2) which provides 'seniority-cum-merit' as the method of recruitment for promotion. It is submitted that if the selection had been made on the basis of seniority-cum-merit, appellants who are senior to the selected candidates, would have been selected.

10. The High Court rejected the said contention. It held that the criteria for 'transfer' to the post of Tehsildar from the category of 'Zileedars' was not seniority-cum-merit under the Rules, and in the absence of prescription of method for recruitment by 'transfer', the procedure laid down by the government and adopted by the Committee for selecting the candidates by assessing their comparative merit, was reasonable and did not suffer from any infirmity.

11. Rule 9 contemplates recruitment to the posts of Tehsildar from three sources. It provides that 40% should be filled by direct recruitment on the basis of recommendations by the State Public Service Commission. The method of selection is merit, by holding the Haryana Civil Service (Executive Branch) and Allied Service Examination. Another 40% of recruitment should be made by promotion from amongst Naib Tehsildars who have 5 years experience and who have passed the departmental examination of Tehsildars. The method of selection for promotion is by seniority-cum-merit. The remaining 20% are required to be filled by transfer from five specified categories of posts. It is, thus, seen that for direct recruitment and for promotion, the Rules specifically prescribe the method of recruitment. But in regard to the 20% posts to be filled by 'transfer', the Rules only specify the categories of posts from which transfer could be made and the minimum experience to be possessed. The Rules do not prescribe the method of selection. The Rules are silent as to whether selection should be by merit or seniority or seniority-cum-merit. This clearly

shows that the rule-making authority left the choice of prescribing appropriate procedure to the state government/appointing authority in the case of 20% posts to be filled by 'transfer'. The reason is not far to seek. The selection by transfer was to be made from different categories, namely, Superintendents from the Offices of the Deputy Commissioners, Assistant Superintendents from the Offices of Commissioners and Deputy Commissioners, District Kanungos, Zonal Zileedars of Irrigation Department or Head Assistants from the office of Director, Land Records. The appointing authority had the discretion of choosing the cadre or service from which appointments by transfer were to be made, depending upon the special or periodical requirements, the number of vacancies to be filled, and the number of eligible candidates available in the category. In the circumstances, the method of selection was left to be decided by the appointing authority.

12. The post of Tehsildar is in the hierarchy consisting of District Revenue Officers, Tehsildars, Naib Tehsildars etc. in the Revenue Department. On the other hand, Zileedars belong to a different cadre in the Irrigation Department, where the promotional post is Deputy Collector. The Head Assistants in Directorate of Land Records belong to yet another cadre. Where the appointments were from different cadres, they were treated as 'transfer' as contrasted from advancement in position from the same cadre (Naib Tehsildar to Tehsildar) which was treated as 'Promotion'. Thus, for the purpose of the Rules, upward movement in the cadre was referred to as 'promotion'; but from a different cadre was called as 'transfer'. Rule 9(2) prescribes 'seniority-cum-merit' as the method of recruitment only for 'promotion' under Rule 9(1)(b)(ii) and Rule 9(1)(a), that is advancement from Naib Tehsildar to Tehsildar and Tehsildar to District Revenue Officer. If the intention was to prescribe seniority-cum-merit as the method of recruitment for transfers also, it would have been so provided in Rule 9(2). The reference to 'promotion' in Rule 9(2) should be read with reference to the use of the said word 'promotion' in rule 9(1), in contradistinction from 'transfer'. It, therefore, follows that the mode of recruitment for transfer is not seniority-cum-merit, as contended by the appellants.

13. In the absence of the Rules prescribing any method of recruitment, the appointing authority was at liberty to follow any reasonable and appropriate procedure for selection. In this case, the selection was made purely on the basis of merit. The procedure adopted for assessing the inter se merit on the basis of five years' ACRs. and interview (set out in Para 6 above) is reasonable and does not suffer from any infirmity, as rightly held by the High Court.

14. The learned counsel for the appellants made an alternative submission. They contended that recruitment for the posts of Tehsildars was originally governed by Standing Order No. 12 issued by the Financial Commissioner; that the said Standing Order contemplated selection to the posts of Tehsildars by seniority subject to fitness; that Standing Order No. 12 continued to be in force even after the Punjab Tehsildari Rules 1932 were framed under section 9 of the Punjab Land Revenue Act, 1887 providing for the method of recruitment for the posts of Tehsildars; that even though Punjab Tehsildari Rules 1932 were repealed insofar as the Tehsildars are concerned, by rule 21 of the Haryana Revenue Group 'B' Service Rules 1988, Standing Order No. 12 insofar as it was not inconsistent with the 1988 Rules was saved and continued to apply; that as the 1988 Rules do not provide for the method of recruitment for transfer, the provision of Standing Order No. 12 providing for recruitment of Tehsildars by seniority subject to fitness, will apply to recruitment by transfer. Support is sought for this contention, from the fact that the Financial Commissioner's letter to Heads of Department seeking the names of eligible candidates refers to Standing Order No.12 and from the fact that on earlier occasions, transfers from Zileedars to Tehsildars were made on the basis of seniority.

15. The said alternative contention is clearly without merit. It is seen that Standing Order No. 12 was originally issued on 16.7.1909 and amended

from time to time. The amended Standing Order No.12 clearly states that after the Punjab Tehsildari Rules, 1932 were made, the appointments, removal and discipline of Tehsildars are governed by those Rules. Therefore, whatever was the method of recruitment of Tehsildars under Standing Order 12, that got replaced by Rule 6 of the Punjab Tehsildari Rules 1932 with effect from 26.11.1932. The Punjab Tehsildari Rules 1932 were repealed by the 1988 Rules in relation to Tehsildars. Thus, it is the 1988 Rules that govern the recruitment of Tehsildars. Standing Order No. 12 is used only for the procedural part of calling for information in prescribed format in regard to candidates from various Departments.

16. Therefore, the contention that selection by transfer should be by 'seniority-cum-merit' or 'seniority subject to fitness' is rejected.

17. A rather vague contention was urged that the confidential reports were not properly scrutinized and, marks were wrongly awarded for the ACRs. The High Court had secured the original records and examined them and ascertained the marks obtained by the candidates. After such examination, it has recorded a finding that the selected candidates had secured more marks and that there was no error or infirmity in assigning marks. The said original record is also produced before us. No infirmity is shown in the marks assigned.

Re : Question (ii)

18. We have already rejected the contention that selection is by seniority. Rule 9(1)(b) provides for filling up 20% of the posts of Tehsildars by transfer from five eligible categories of posts belonged to different cadres. The said rule does not lay down how the available vacancies are to be shared among the eligible categories. Rule 9(1)(b) also indicates that the recruitment 'by transfer' need not be from all five categories, by using the word 'or' when listing the five categories. Therefore, the appointing authority can choose the categories from which it can make appointment by transfer. In regard to the recruitment in question, the State Government (Financial Commissioner) proposed that the vacancies shall be shared in the ratio of 50% for Zileendars and 50% by the other four categories. This proposal was in line with earlier recruitment where such ratio was followed. The said proposal made by the Financial Commissioner on 14.7.1992 was accepted by the Chief Minister on 17.7.1992. Thus, there was a clear decision by the government that only 50% of the vacancies will be filled up from the category of Zileendars. As six posts were to be filled by transfer, three were filled from the category of Zileendars by assessing their inter se merit, and the other three posts were from the other categories. There was no question of mixing the category of Zileendars with the other categories for the purpose of selection by transfer. The decision allotting 50% of vacancies is taken by the Government and not the Committee, and does not suffer from any infirmity.

Re : Contention (iii) [In CA No.3876/2001] :

19. It is not in dispute that marks should be assigned in respect of five latest ACRs. The records were examined by the High Court. We have also perused the original file. The records produced disclose that in the case of selected candidates, marks for ACRs were, in fact, allotted with reference to five ACRs. In the case of Ashok Kumar Gaur, the marks are 15, 15, 12.5, 10 & 10, in all 62.5. In the case of Sant Lal Pachar the marks are 12.5, 10, 10, 10 & 12.5 in all 55. In the case of Bhagwan Dass the marks allotted are 12.5, 12.5, 10, 10 & 12.5 in all 57.5. On the other hand in the case of Jai Narain (appellant in CA No.3876/2001), the Tabular Statement prepared at the time of selection shows 'NA' for 1991-92 and marks of 10, 10, 10 & 10, in all 40, were allotted in regard to the ACRs. for four years. The contention of Jai Narain is that his ACR for 1991-92 was deliberately not made available and while in the case of others, marks were calculated for five years, in his case, it has been calculated only for four years thereby causing prejudice. There is considerable force in the submission that as his ACR for 1991-92 was not

put up, he was prejudiced as no marks were assigned for that year. But this question is of academic importance. As notice above, the maximum marks that could be awarded for each year's ACR were 15. The case of the appellant is that he subsequently came across his ACR for 1991-92 which showed his grading as 'very good'. Therefore, even if 12.5 marks are added, the aggregate marks for ACR would be 52.5 instead of 40. By adding the 11 marks secured in interview, his total marks would be 63.5 instead of 51. As can be seen from the tabular statement in para 7 above, the total marks secured by the selected candidates are 70.5, 69 and 66.5. All three have secured more than the marks which Jai Narain would have secured (63.5) even by adding the marks for the ACR for 1991-92. Therefore, there is no merit in the contention of Jai Narain that he would have been selected if his ACR for 1991-92 had been taken into account.

20. The appellant next contended that even in regard to the ACRs for four years which were taken into account, there was a deliberate mix-up and the ACRs of another Zileadar of the same name (Jainarain) whose date of birth was 4.6.1939 and who was promoted as Zileadar on 6.11.1978 has been taken note of. It is pointed out that his ACRs for the said four years are stated to be missing subsequently in the department and this supports his contention that someone else's ACRs. were used in his case. The State has denied that four years' ACRs of some other Jainarain were used. It is submitted that the four original ACRs were available at the time of consideration and selection and they were lost subsequently. The consolidated statement showing the details of Zileaders whose cases were considered along with particulars of the ACRs. were sent by the Chief Engineer, Irrigation Department, to the Financial Commissioner under cover of letter dated 4.2.1992. The appellant himself produced a copy thereof as Annexure P-1 with the writ petition. The said statement shows the name of Jai Narain at Serial No.29. It shows his date of birth as 12.6.1951 and date of entry into service as 12.3.1984. It also states that out of the 7 years of service of the appellant as Zileadar, for 4 years he had secured the grading "good", for 2 years, he had secured the grading "very good" and for one year he got the grading "below average". The ACRs. shown are up to 1990-91 as the ACR for 1991-92 was not available. It is, thus, clear that the ACRs. that were taken note of, were those of the appellant and not of some other Jainarain. It is also clear that for the four years preceding 1991-92, the grading was "good" and marks have been assigned accordingly.

21. The appellant next contended that he had a postgraduate qualification of MA and a B.Ed. Degree, and he had also participated in sports (first in the State Level Kabaddi competition) and other extra-curricular activities (Fancy Dress competition in 1972-73). It is alleged that appropriate marks were not given for the educational qualification and sports and extra-curricular activities). This contention is also without merit. The guidelines in regard to interview show that out of the 25 marks, 5 marks were earmarked for academic qualifications. In regard to the basic qualification of a Degree, the candidates who secured first class were given 3 marks, those who secured second class were given 2 marks and other graduates were not entitled to any mark. Persons with postgraduate degree or LL.B. were entitled to additional 2 marks. In this case, the appellant apparently did not have first class or second class but he had a post-graduate degree. The result-sheet of Zileaders prepared by the Committee shows that the appellant was given 2 marks for his post-graduate qualification, 1 mark for experience, 2 marks for outstanding achievements (sports etc.) and 6 marks for overall performance \026 in all, 11 marks. It is, thus, seen that his degrees as also his sports and other activities, were duly taken note of and appropriate marks awarded. The contention that the appellant was not given proper marks in interview is, thus, without merit.

Re : Contention (iv) [Re : CA No.3874/2001] :

22. The posts of Zileadar (Class III post) in the Irrigation Branch and the posts of Teshildar (Class II post) in the Revenue Department are in different cadres. The promotional post for Zileadar in the Irrigation Branch is Deputy

Collector (Class II post). The appellant and several other Zileedars including one Prem Singh were promoted as Deputy Collectors by order dated 21.4.1992 of the Financial Commissioner (appointing authority) and given effect to vide Government order dated 14.5.1992, with immediate effect.

23. The said Prem Singh had approached the High Court contending that he should have been promoted as Tehsildar. The High Court directed that he should be appointed by transfer to the post of Tehsildar. That was challenged by the State. This Court allowed the State's appeal by judgment dated 5.4.2000 (State of Haryana v. Prem Singh & Ors. reported in 2000 (9) SCC 18). This Court held :

"The facts available on record clearly disclose that Zileedar is a Class III post and Tahsildar and Deputy Collector are Class II posts. x x x x x Respondent 1 had worked for about two years on the equivalent post of Deputy Collector to which post he had been promoted on 14-5-1992 and, therefore, he cannot claim to be appointed as a Tahsildar by transfer. Posts of Deputy Collector and Tahsildar are both Class II posts and are equivalent posts. Deputy Collector is a post under the Irrigation Department, whereas Tahsildar is under the Revenue Department in the State. It is also made clear by the affidavit of Bhagwan Dass Bishnoi, Tahsildar, Narnaul (Haryana) that Respondent 1 was promoted to the post of Deputy Collector and was granted regular promotion thereto and the Haryana Public Service Commission has also approved such promotion by an order made on 14-5-1992. The contention advanced on behalf of the first respondent that he held a post inferior to that of a Tahsildar falls to the ground and, therefore, he cannot claim the benefit of promotion at all. It is also clear from the Recruitment Rules that the case of the respondent could not have been considered on any other basis. While Respondent 1 had been promoted to the post of Deputy Collector by an order made on 21-4-1992, the writ petition was filed on 26-11-1992. In the circumstances, he could not have made a claim to the post of Tahsildar at all."

It is not disputed that the appellant was promoted as Deputy Collector along with Prem Singh by a common order. Therefore, what has been held by this Court in the case of Prem Singh (supra), will squarely apply to the appellant also. The appellant, who was promoted as Deputy Collector vide order 14.5.1992, is not entitled to claim promotion as Tahsildar nor challenge the appointment of respondents 2 to 7 by transfer as Tahsildars as per order dated 21.10.2002. Following the decision in Prem Singh, the appeal of Inderjeet Khurana is liable to be rejected.

24. We are also informed that during the pendency of this appeal, the appellant has retired and, therefore, the question of considering his case for appointment as Tahsildar by transfer, would not arise. In view of the above, it is unnecessary to consider the contentions raised by the appellant with reference to the validity of appointment of respondents 2 to 7 as Tehsildars. In fact, we have considered and rejected those contentions while considering the common contentions.

25. Inder Jeet Khurana, the appellant, has also challenged the selection of Jatinder Kumar and Mam Chand, both Assistant Superintendents, as Tahsildars, on the ground that they did not possess the required minimum experience of 5 years when their names were recommended by the concerned Department and, therefore, they could not have been selected. This is resisted on the ground that the Government had relaxed the requirement relating to experience in their cases in exercise of power under Rule 18. It is, however, unnecessary to examine this contention as neither Jatinder Kumar nor Mam Chand is from the category of 'Zileedars' but are from the category of 'Assistant Superintendents'. As noticed above, it was decided that 50% of the posts of Tahsildars will be filled by transfer from the category of 'Zileedars' and remaining 50% from other categories belonging to the Revenue Department. The appellants, who are Zileedars,

were not affected by the selection of those candidates falling under the other categories, can have no legitimate grievance on that behalf.

Conclusion :

26. In view of the rejection of all contentions, these appeals are dismissed as having no merit. Parties to bear their respective costs.

JUDIS