

PETITIONER:
CHANDER BHAN

Vs.

RESPONDENT:
HOTILAL GUPTA AND OTHERS

DATE OF JUDGMENT 09/10/1990

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
FATHIMA BEEVI, M. (J)

CITATION:
1990 SCR Supl. (2) 133 1991 SCC Supl. (2) 156
JT 1991 (1) 163 1990 SCALE (2) 733

ACT:

Punjab Courts Act, 1918/High Court Rules and Orders Vol. I Chapter XVIII A: Section 35(3)/Rules II, IV & VI--Promotion to the post of Upper Division Clerk---Rule of rotation--Whether applicable to the establishment of Judge, Small Causes Court.

HEADNOTE:

One post of Upper Division Clerk/English Clerk fell vacant in the Small Causes Court. Appellant made his claim to the post on the footing that he was a graduate and on the basis of Rule of Rotation embodied in Rule VI of the High Court Rules and Orders, Volume 1, Respondent No. 1 made his claim on the basis of seniority. The Judge, Small Causes Court took the view that the appellant was entitled to promotion in preference to Respondent No. 1 because of the rule of rotation. On an Administrative Appeal, the District

JUDGMENT:
applicable to the establishment of Judge, Small Causes Court, and appointed Respondent No. 1 as Upper Division Clerk. The Appellant preferred a departmental appeal which was heard by a Single Judge on the Administrative side of the High Court. He took the view that the promotion in question could be made by the District & Sessions Judge, and should be in accordance with the rule of rotation.

Respondent No. 1 challenged the said decision by way of a Writ Petition. The High Court allowed the Writ Petition and held that not only initial appointments but also appointments by promotion were to be made by the Judge, Small Causes Court and not by the District & Sessions Judge, and that the rule of rotation was not applicable.

Against the High Court's decision, the appellant has preferred this appeal contending that the promotion in question could only be made by the District & Sessions Judge and that the rule of rotation was applicable even to the appointment by promotion.

Dismissing the appeal, this Court,

HELD: 1. Whenever a specific mention is made regarding a

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particular officer of an establishment in a rule, that particular rule would normally apply to that establishment alone and the powers conferred by that rule would be con-

ferred on the officer mentioned in the rule. Rule VI(1) of the High Court Rules speaks of appointments to the higher grades of the ministerial establishments and states that these appointments should ordinarily be made by seniority from lower grades provided that the officer to be promoted possesses the qualifications prescribed. The first proviso to that rule goes on to say that the permanent vacancies in the original grade of Rs.75-5-125 shall be filled in by the District & Sessions Court by rotation as set out in the said sub-rule (1) of Rule VI. The 1st part of Rule VI deals with appointments by promotion to the higher grade of ministerial establishment. Generally it must be held applicable to the establishment of the District & Sessions Court as well as that of the Judge, Small Causes Court. This part, however, does not deal specifically with the question as to who is the officer competent to promote. In view of this, the proviso can only be construed as laying down that, where the power of appointment by promotion is vested in the District & Sessions Judge, in making appointments by promotion to fill in the permanent vacancies in the said original grade of Rs.75-5-125, rule of rotation set out in the first proviso to clause (I) of Rule VI should ordinarily be followed. It is not disputed that there is a separate Cadre for the Court of Small Causes. Rule IV(3) shows that the first appointment of the ministerial officers in the Court of Small Causes is to be made by the Judge of the Small Causes Court. [139F-H; 140A-C]

2. A reading of sub-section (1) of the Punjab Courts Act, 1918 the High Court Rules, and Notification issued makes it clear that appointments by promotion to the posts in the entire ministerial cadre other than those in the process serving and mental establishments in the Court of Small Causes have to be made by the Judge, Court of Small Causes and the first proviso to Rule VI(1) prescribing the rule of rotation has no application to such appointments. Moreover, it would be unreasonable to apply the principle of rotation to the Court of Small Causes where there is only one U.D.C. The principle of rotation can be made applicable to the District & Sessions Court because there are a number of posts of Upper Division Clerks. It would be irrational to apply that principle of rotation to the Court of Small Causes in which there is only one Upper Division Clerk/English Clerk. [140D-E]

3. In the seniority list of the establishment of the Judge of Small Causes Court, Delhi, the name of Respondent No. 1 appears at Serial No. 9 whereas that of the appellant appears at Serial No. 19. Both of them satisfy the test of integrity. The only claim the appellant can have

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is on the principle of rotation as he is a graduate. As that principle does apply to an appointment by promotion to the post in question, the claim of the appellant cannot be upheld. [140F-G]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 592 of 1982.

From the Judgment and Order dated 7.8.1981 of the Delhi High Court in Civil Writ Petition No. 1003 of 1974.

Prithvi Raj and T.C. Sharma for the Appellant.

Dr. Arun Kumar and V.B. Saharya for the Respondents.

The Judgment of the Court was delivered by

KANIA, J. On the retirement of one Jagan Nath Kohli, who

was holding the post of Clerk of Court (Upper Division Clerk) in the grade of Rs. 130-300 (old Scale Rs.75-5-125), one post of Upper Division Clerk (U.D.C.)/English Clerk fell vacant in the office of the Judge, Small Causes Court, Delhi. Five officials of that court, namely, the appellant and respondents nos. 1, 5, 6 & 7 asserted their claim to the said post. The appellant, Chander Bhan, made his claim on the footing that he was a graduate and on the basis of the rule of rotation as embodied in Rule VI in Chapter XVIII-A of the High Court Rules and Orders, Volume-I referred to more particularly hereinafter. Respondent no. 1, Hotilal Gupta, claimed the said post on the basis of his seniority. We are not concerned with the claims of the other claimants because the contest before us is between the claims of the appellant and respondent no. 1. The Judge, Small Causes Court in his order dated August 10, 1971, took the view that the appellant who is a graduate and has got 2-1/2 years office experience as Lower Division Clerk (L.D.C.), was an honest and efficient worker and was entitled to promotion in preference to respondent no. 1 because of the rule of rotation. The aggrieved parties filed an Administrative Appeal before the District & Sessions Judge, Delhi who passed his order dated July 17, 1973 and held that the rule of rotation did not apply to the establishment of the Judge, Small Causes Court. He held that respondent no. 1 being the senior most official as Lower Division Clerk was entitled to the post of Upper Division Clerk and accordingly appointed respondent no. 1 as Upper Division Clerk against the said vacancy. Being aggrieved, the appellant filed a departmental appeal against the said order to the High Court of Delhi which was heard by a learned

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Judge on the Administrative Side of that Court who, by his order dated August 7, 1974, accepted the appeal of the appellant and set aside the appointment of respondent no. 1. He took the view that promotion in the office of the Judge, Small Causes Court, Delhi could only be made by the District and Sessions Judge, Delhi and that the vacancy should be filled in accordance with rule VI of the Rules framed by the erstwhile Punjab High Court, under section 35(3) of the Punjab Courts Act, 1918, for subordinate services attached to Civil Courts other than the High Court (hereinafter referred to as 'the said rules').

Respondent no. 1, Hotilal Gupta challenged the correctness of the view taken by the learned Judge on the Administrative side by filing a writ petition being C.W. No. 1003 of 1974 in the Delhi High Court. By an order dated 7th August, 1981, the Division Bench of the Delhi High Court allowed the said writ petition, quashed the order dated 7th August, 1974, passed by the learned Single Judge and upheld the order of the District and Sessions Judge, Delhi appointing respondent no. 1 to the said post. The Division Bench took the view that not only the initial appointments but also the appointments by promotion to the post of Upper Division Clerk in the office of the Judge, Small Causes Court were to be made by the Judge, Small Causes Court and not by the District and Sessions Judge, and held that the rule of rotation on the basis of which the appellant had been appointed to the said post by the order of the Single Judge on the Administrative Side was not applicable to the said appointment. It is submitted by learned counsel for the appellant that the Division Bench of the High Court was in error in coming to the said conclusion. It was submitted by him that although the first appointment to the post of Upper Division Clerk in the office of the Judge, Small Causes

Court, Delhi is to be made by a Judge of Small Causes Court, promotion to that post could only be made by the District & Sessions Judge and the rule of rotation contained in the first proviso to Rule VI of the said Rules was applicable to the appointment by promotion.

order to consider the merit of the submission of learned counsel for the appellant, it is necessary to bear in mind the relevant provisions of law.

The relevant portion of section 35 of the Punjab Courts Act, 1915 reads as follows:

"(1) The ministerial officers of the District Courts and
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Courts of Small Causes shall be appointed and may be suspended or removed by the Judges of those Courts respectively.

(2) xxx

(3) Every appointment under this section shall be subject to such rules as the High Court may prescribe in this behalf, and in dealing with any matter under this section, a Judge of a Court of Small Causes shall act subject to the control of the District Court."

The rules for subordinate services attached to Civil Courts other than the High Court were framed by the erstwhile Punjab High Court under section 35(4) of the Punjab Courts Act. A perusal of Rule II of the said Rules dealing with classification, shows inter alia that Clerks of Court to Senior Subordinate Judges and Judges of Courts of Small Causes and English and Vernacular Clerks form a joint cadre. Subrule (b) of Rule II of the said Rules inter alia provides that there shall be a separate cadre for each Revenue District and a separate cadre for each Court of Small Causes. Rule III deals with qualifications and sub-rule (2) of that Rule provides that no person shall be appointed to, or accepted as a candidate for, any clerical ministerial post, unless he has passed the Matriculation Examination of the Punjab University or an equivalent examination. The material part of Rule 'IV runs as follows:

"IV. First appointments.

First appointment shall be made as follows:

(1) By the District Judge:-

(a) Ministerial officers in his own court and in all courts controlled by the District Court other than Courts of Small Causes; .

(b) x x x

(1)	x	x	x
(2)	x	x	x

(3) By the Judge of a Court of Small Causes:- Ministerial Officers and menials in his own Court."

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Rule V deals with appointment and sub-rule (1) of that Rule thereof runs as follows:

"(1) Appointment to ministerial posts shall ordinarily be made either by open competition or by selection from a list of qualified candidates or apprentices accepted by the District Judge. Judge of a Small Causes Court, or Sub-Judge to whom powers of appointment have been delegated, as the case may be. Any departure from either of these methods should be reported to the High Court for confirmation."

Rule VI. which is of central importance in this appeal runs as follows:

as follows: "VI. Promotion--(1) Appointments to the higher grades of the ministerial establishment should ordinarily be made by seniority from lower grades, provided that the official who would thus receive promotion possesses the

prescribed educational qualifications and is otherwise fit to perform the duties to which he will be promoted, for which purpose tests may be imposed. This rule does not apply to such posts as that of stenographer, for which special qualifications are needed; but preference should be given to officers with such qualifications who are already working in the lower grades:

Provided that permanent vacancies in the 75-5-125 grade shall be filled by the District and Sessions Judges in the following rotation:

(i) By selection on merit out of graduates who have at least two years' experience in the work of the office, if there is no suitable graduate who fulfils this condition an 'outsider' graduate may be appointed, but he must be one who normally resides within the jurisdiction of the District and Sessions Judge.

(ii) & (iii) By normal promotion in-the office, i.e. the appointment of the next senior man whether graduate or non-graduate subject to his fitness:

Provided further that the rotation may be modified in
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very exceptional cases when the direct appointment of a graduate would mean the ousting of a man- who had been officiating quasi-permanently in the post concerned for an appreciable period. What is an appreciable period will depend on the circumstances of each case. After such a modification. the rotation should be restored as soon as possible.

(2) In making promotions preference may invariably be shown to officials who are known to be strictly honest. No promotion should be given and no recommendation for promotion made in the case of an official who does not possess and maintain a reputation for strict integrity. Efficiency without honesty is not to be regarded as constituting a claim to promotion.'

A Notification dated October 28, 1953 was issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution and in supersession of the Notification issued earlier on February 17, 1941. The said Notification sets out that subject to such general rules as may be made by the Hon'ble Judges of the Punjab High Court in that behalf appointments to the posts on the establishment of the Civil Courts at Delhi specified in Column (1) of the Schedule thereto shall be made by the Authority specified in the corresponding entry in Column (2) of the said Schedule. A perusal of the Schedule shows that appointments to the posts on establishments other than process serving and menial establishments in the Small Causes Court at Delhi are 'to be made by the Judge, Small Causes Court, Delhi.

It has been pointed out in the impugned judgment that the establishment of the District and Sessions Court and that of the Court of the Small Causes constitute separate cadres. This is not disputed before us. Hence, whenever a specific mention is made regarding a particular officer of an establishment in a rule, that particular rule would normally apply to that establishment alone and the powers conferred by that rule would be conferred on the officer mentioned in the rule. Rule VI(1) speaks of appointments to the higher grades of the ministerial establishments and states that these appointments should ordinarily be made by seniority from lower grades provided that the official to be promoted possess the qualifications prescribed. The first proviso to that rule goes on to say that the permanent vacancies in the original grade of Rs.75-5-125 shall be filled in by the District and Sessions Court by rotation as set out in the

said sub-rule (1) of Rule VI. The first part of Rule VI deals with appointments by promotion to the higher grade of ministerial establishment. Generally it must be

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held applicable to the establishment of the District and Sessions Court as well as that of the Judge of the Small Causes Court. This rule, however, does not deal specifically with the question as to who is the officer competent to promote. In view of this, the proviso can only be construed as laying down that, where the power of appointment by promotion is vested in the District and Sessions Judge, in making appointments by promotion to fill in the permanent vacancies in the said original grade of Rs.75-5-124, rule of rotation set out in the first proviso to clause (1) of Rule VI should ordinarily be followed. It is not disputed that there is a separate Cadre for the Court of Small Causes. Rule IV(3) shows that the first appointment of the ministerial officers in the Court of Small Cause is to be made by the Judge of the Small Causes Court. The notification dated October 28, 1953 referred to earlier provides that the appointments to the posts on establishment other than process serving and menial in the Court of Small Causes are to be made by the Judge, Small Causes Court, Delhi.

A reading of sub-section (1) of the Punjab Courts Act and the rules and Notification discussed earlier makes it clear that appointments by promotion to the posts in the entire ministerial cadre other than in the process serving and menial establishments in the Court of Small Causes have to be made by the Judge, Court of Small Causes and the first proviso to Rule VI(1) prescribing the rule of rotation has no application to such appointments. Moreover, it would be unreasonable to apply the principle of rotation to the Court of Small Causes where there is only one U.D.C. The principle of rotation can be made applicable to the District & Sessions Court because there are a number of posts of Upper Division Clerks. It would be irrational to apply that principle of rotation to the Court of Small Causes in which there is only one Upper Division Clerk/English Clerk.

In the seniority list of the establishment of the Judge of Small Causes Court, Delhi, the name of respondent no. 1 appears at Serial No. 9 whereas that of the appellant appears at Serial No. 19. Both of them satisfy the test of integrity. The only claim the appellant can have is on the principle of rotation as he is a graduate. As that principle does not apply to an appointment by promotion to the post in question, the claim of the appellant cannot be upheld. As we have already observed, none of the other respondents have pressed their claims in the High Court or here.

In the result, the appeal fails and is dismissed. Looking to the facts and circumstances of the case- there will be no order as to costs.

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Appeal dis-