

PETITIONER:
MOHAN DUTT SHARMA

Vs.

RESPONDENT:
CHIEF JUSTICE, PUNJAB & HARYANA HIGH COURT

DATE OF JUDGMENT: 30/07/1997

BENCH:
SUJATA V. MANOHAR, G. B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

The appellant joined the services of the High Court of Punjab and Haryana as a Clerk in the year 1966. In 1973 he was promoted as an Assistant. From 1979 he was a Senior Assistant within the cadre of Assistants. As Senior Assistant he was entitled to a higher pay-scale. In or around 1978 on account of cases relating to defaulting of finds in the subordinate courts coming to the notice of the High Court, it was decided by the Chief Justice and other Judges of the High Court, it was decided by the Chief Justice and other Judges of the High Court, it was decided by the Chief Justice and other Judges of the High Court that an agency should be created on the establishment of the High Court to undertake audit of the subordinate courts. The office of the Accountant General was not in a position to do this work for the High Court. It was, therefore, decided that the work of audit both in the High Court as well as in the subordinate courts should be done by the High Court as well as in the subordinate courts should be done by the High Court departmentally by posting some experienced or properly qualified officers in charge of the work. The High Court did not have any qualified staff members who had passed the Accounts Services Examination. It, therefore, set up an Internal Audit Cell in 1978 which then consisted of two superintendents Grade II, two Assistants and a clerk. The appellant worked in the internal Audit Cell from its inception.

In May 1981 the appellant passed the Subordinate Accounts Services (SAS) Examination held by the Haryana Government Finance Department. According to the appellant officials who have qualified in the SAS examination are usually posted as Section Officers in the Central Government and as senior Auditors in the State Governments. Their next avenue of promotion is to the post of Accounts officer. On qualifying in the SAS examination appellant made a representation to the Chief Justice of the Punjab and Haryana High Court in which he pointed out that he was the first official of the court who had qualified in the SAS examination. Keeping in view his qualification and experience, he should be given an opportunity to serve as

Superintendent for the purpose of conducting audit of the accounts of the High Court as well as the subordinate courts. He stated that he was the only official who was qualified to do this work and requested that his qualification and experience should be recognised by making him superintendent. This representation was considered by the Chief Justice of the High Court. Bearing in view the qualification and the excellent work which was being done by the appellant in the Internal Audit Cell, it was decided to promote the appellant as officiating Superintendent Grade II, against a newly created post although he was junior to several other officers in the cadre of Assistants. Accordingly by an office order dated 9.2.1982 the appellant was promoted as officiating Superintendent Grade II (on ad hoc basis) with effect from 3.2.1982. In the "remarks" column it was stated as follows:-

"Against a newly created post w.e.f. 3.2.1982 (forenoon) by keeping in abeyance one post of Senior Assistant held by him subject to the condition that on his promotion he will not be deemed to have become senior Assistant held by him subject to the condition that on his promotion he will not be deemed to have become senior to those official who are otherwise senior to him in the general seniority and that he will have no preferential claim for promotion as superintendent Gr. I merely on account of his present promotion."

In May 1982 the appellant made a further representation to the Chief Justice of the High Court which is dated 20th of May 1982. The appellant requested that he should be promoted to Superintendent Grade I. He pointed out that in the course of his duties, he had to inspect the work and accounts of persons holding posts senior to him, which was causing some embarrassment. He submitted that looking to the nature of the work and his responsibilities, he should be promoted as Superintendent Grade I so that he can effectively discharge his duties of carrying out the internal audit of the High Court and the subordinate courts.

The representation of the appellant was put up before the Chief Justice of the High Court with an office note which said that his representation may be considered favourably and a post of Superintendent Grade I should be created for the appellant. However, in order to safeguard the interests of officials senior to him, it was recommended that a condition should be imposed similar to the condition which was earlier imposed when he was promoted as Superintendent Grade II as a special case. The Chief Justice of the High Court accepted this recommendation. By an office order dated 20.12.1982, the appellant was promoted from officiating Superintendent Grade II to the post of Superintendent Grade I. In the "remarks" column it was stated as follows:-

"Against a newly created post for him. His appointment is subject to the condition that on account of his promotion he will not be deemed to have become senior to those officials in general seniority and he will have no preferential claim

merely on account of his present post."

Therefore, both these promotions were special promotion which were given to the appellant in view of his special qualifications and for discharge of special duties for which he was suited, as also on account of his excellent track record. It is necessary to note that when the appellant was promoted from senior Assistant to Officiating Superintendent Grade 1 he was the junior most in the list of Superintendents Grade II.

In 1987 the appellant made a representation seeking waiver of the conditions which were imposed upon him when he was promoted as superintendent Grade II and thereafter as Superintendent Grade II and as Superintendent Grade I. On that basis he should also be given selection Grade as Superintendent Grade I. By an order of "office Judge" dated 22.4.1987 this representation was rejected and this rejection was endorsed by the Chief Justice of the High Court. Thereupon the appellant filed a Civil Writ Petition No 5932 of 1987 in the High Court praying that the conditions imposed at the time of granting promotions to the appellant, denying him the benefit of seniority should be deleted and that he should be granted seniority, confirmation and selection Grade from the date his juniors have been conformed and granted selection Grade in the said posts and for other reliefs. This Writ petition has been dismissed by the High Court and hence the appellant has preferred the present appeal.

Rule 8 of the High Court (conditions of Service) rules at the material time prescribed, inter alia, that for the post of Superintendent Grade I the method of promotion was by "selection on the basis of seniority cum merit" from out of Superintendents Grade II and Revisors in the ratio of 5.1.

Rule 12 prescribed, inter alia, that promotion to the post of Superintendent Grade II was by "selection on the basis of seniority cum merit" from out of the Assistants.

Rule 24 provided as follows :-

"Promotion in the High Court Establishment from one grade to the next higher one shall except in cases where competitive examination is prescribed, be by selection and no one shall have a right to claim promotion merely on the basis of seniority."

Rule 30 which dealt with seniority provided, inter alia, that seniority shall be determined separately for each category of post in the establishment and that up to the date of confirmation, seniority shall be determined by the length of continuous service in the particular category of posts. Within the same category, seniority shall be determined from the date of confirmation in the particular category. Rule 38 provided as follows-

"Where the Chief Justice is satisfied that the operation of any rule causes undue hardship in any particular case, he may by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner provided that the case is not dealt

with in a manner less favourable to the officer or official concerned than in accordance with the rules."

Ordinarily, therefore, promotion to the posts in question is on the basis of seniority cum merit; and a person is not entitled to claim promotion merely on the basis of his seniority. Rule 30 which deals with seniority further provides that seniority is based upon the length of continuous service in respect of employees who are not confirmed; while it is based on the date of confirmation in the case of employees who are confirmed in that post.

The promotion of the appellant was not in the normal course. This is quite clear from the representations made and from the fact that a post was specially created for the appellant first, in the cadre of Superintendent Grade ii, and then in the cadre of Superintendent Grade I. This was done because of the special requirements of the High Court and the fact that the appellant as the only qualified person who was in a position to meet these special requirements of the High Court and carry out the special responsibilities and duties of internal audit in a proper manner. Looking to the seniority of the appellant in the cadre of Assistants it was also obvious that the promotion which was given to the appellant would cause prejudice to a number of persons who were senior to the appellant in the cadre of Assistants and who would have probably been selected for promotion on the basis of seniority cum merit prior to the appellant. It was in these circumstances that the Chief Justice, in exercise of his powers under Rule 38, directed that the normal rule as to seniority should not be applied in the case of the appellant and that his said two promotions would not make him senior to those officials who were otherwise senior to him in "the general seniority". The appellant has pleaded for deletion of this condition as contrary to the High Court Rules. Rule 38, however, empowers the chief justice to impose a special condition when the application of a rule may cause undue headship in particular case. The condition was imposed in the case of the appellant because the chief Justice felt that in order to deal in a just manner with the promotion in question and with those who were senior to the appellant in the lower cadre, it was necessary to impose such a condition protecting the seniority of those in the lower cadre. The promotion was subject to this condition and, therefore, the promotion and the condition attached cannot be de-linked. There is no doubt that it was in very special circumstances that the appellant was given these two promotions which he would not have otherwise got. Undoubtedly, the appellant had discharged his duties in a very able manner and had exerted himself to earn the qualification of passing the SAS examination which enabled him to discharge which were entrusted to him by the high Court. The promotion that was given to him was in recognition of his ability and his qualification. At the same time, if the Chief Justice thought it edit to impose a condition protecting the seniority of other officers in the lower cadre in view of this out of turn promotion, that condition cannot be considered as unjust and unreasonable. It cannot, therefore, be struck down in the manner claimed by the appellant.

What are the implications of the condition which was so imposed twice in succession? At the time when the appellant was promoted as superintendent Grade Ii the appellant was 95th in the seniority list of the Assistants. Therefore, the condition that on his promotion, he will not be deemed or have become senior to those officials who are otherwise

senior to him in " the general seniority" would be referable to all those officials who were senior to the appellant in the seniority list of Assistants. These Assistants would, as and when promoted as Superintendents Grade II, rank above the appellant although the appellant was promoted as Superintendent Grade II prior to them. Obviously, the conditions will operate so long as the appellant remains in the cadre of Superintendent Grade II. Otherwise the question of inter se seniority between the appellant and others in the said cadre would not arise and as per rule 30, there is separate seniority for each cadre.

Thereafter, in December 1982 the appellant was promoted as Superintendent Grade I. This promotion was also subject to the condition that he will not be deemed to have become senior to those officials senior to him in " the general seniority". In this instance, the appellant was being promoted from Superintendent Grade II to Superintendent Grade I. The condition, therefore, has a reference to the seniority of the appellant in the cadre of Superintendent Grade II from which he was promoted as Superintendent Grade I. The appellant was the junior most in the cadre of Superintendent Grade II. Therefore, all those persons who were senior to the appellant in the cadre of Superintendents Grade II there being a separate seniority list for each cadre would, on promotion as Superintendents Grade I, rank in seniority above the appellant although he was promoted earlier to them as Superintendent Grade I. For the promotional post of Superintendent grade I, for the purpose of protecting the seniority of others, one has to look to the position of the officials who are in the same cadre along with the appellant in the lower grade of Superintendents Grade II which promotion is made. Therefore, in the case of promotion to the post Superintendent grade i, one has to look to the seniority list of Superintendents Grade II. All those persons who ranked above the appellant in the cadre of Superintendents Grade II at the time when he was promoted as Superintendent Grade i would, on their promotion as Superintendents Grade i, retain their seniority above the appellant. The respondents are, therefore not right in contending that even for the purpose of seniority in the cadre of Superintendent Grade i, the appellant will rank below all those assistants who were senior to him at the time when he was promoted as Superintendent Grade II. The general seniority which is referred to in the condition imposed at each step is the general seniority in the cadre from which promotion is made to the post in question. It cannot go beyond the general seniority in the cadre from which the promotion is made. Any previous seniority in the cadre from which the promotion is made. Any previous seniority in a lower cadre beyond the cadre from which promotion is made may be different or conflicting and would be irrelevant for this purpose. therefore, the only persons who are entitled to claim seniority above the appellant in the cadre of Superintendents Grade I are those persons who were holding the post of Superintendents Grade II along with the appellant at the time when the appellant was promoted as Superintendent Grade I and who were senior to the appellant in the cadre of Superintendents Grade II. it is their seniority which is protected by the condition which is imposed in the order of promotion by respondent no 1.

The justification for this special condition and for the exercise of power under rule 38 lies in the especial requirements of the High Court at the material time and the fact that the appellant was, by virtue of his ability and qualification. Specially suited to meet these requirements.

Such a special condition can be imposed only when they are special circumstances which warrant a special promotion. The condition so imposed not be understood as continuing after all times in respect of all future promotions of the appellant. Such an interpretation would make the condition onerous and also beyond the powers conferred by rule 38. This is because rule 38 has a proviso to the effect that the case cannot be dealt with in a manner less favourable to the officer concerned than in accordance with the rules. Future promotions which are made in the normal course by applying the principle of selection as set out in the relevant rules would not warrant the imposition of any such condition. One must bear in mind that when promotions are by selection on the basis of merit as well as seniority, it is possible that a junior who is more meritorious than his senior may be promoted in preference to his senior. In such a situation the junior who is promoted will rank as senior in the promotional post to his erstwhile senior who may be promoted at a later date. Simply because that person was senior in the lower cadre, a junior who is more meritorious and who secured an earlier promotion cannot be deprived of his seniority under the normal rules of seniority. In fact, for higher posts carrying heavy responsibilities, merit is a very important consideration. The efficiency and proper functioning of any institution depends upon able and responsible people being selected for positions of responsibility. The promotional process must be conducive to such person reaching positions of authority in the institution.

The appeal of the appellant, therefore, in so far as the appellant seeks the removal of condition imposed relating to his seniority at the time when he was promoted as Superintendent Grade II and Superintendent Grade I fails. Seniority of the appellant as Superintendent Grade II will be determined in accordance with the condition imposed. Therefore, all those persons who are promoted as Superintendent grade II from the cadre of Assistants will rank in seniority above the appellant in the cadre of superintendents Grade II if they were senior to the appellant in the cadre of Assistants. This is, of course, provided that at the time of the promotion of such seniors, the appellant is also in the cadre of Superintendents Grade II. Otherwise the question of their being placed above the appellant in the cadre of Superintendents Grade II does not arise. Similarly, in the cadre of Superintendents Grade I all those persons who are promoted as superintendents Grade I from the cadre of Superintendents Grade II who were senior to the appellant in the cadre of Superintendents Grade II will rank above the appellant in the cadre of Superintendent Grade I as and when such seniors are promoted to the cadre of Superintendents Grade I. Once again this contingency will arise only in the case of promotions was made while he appellant is in the cadre of Superintendents Grade I. If for any reason the appellant is no longer in the cadre of Superintendents Grade I at the time when his seniors in the cadre of Superintendents Grade II are promoted, the question of their being placed above the appellant does not arise. If on the basis of determination of appellants seniority in this fashion in the cadre of Superintendent Grade II as well as Superintendent Grade I, the appellant becomes entitled to Selection Grade I, the appellant becomes entitled to Selection Grade by virtue of his Seniority so determined, he will be granted Selection grade. This position in the seniority list does not warrant the grant of Selection Grade, the same will not be granted to the appellant. We are

informed that the grant of selection grade depends entirely on the position in the seniority list of the cadre concerned. With these directions, the appeal is disposed of. There will however, be no order as to costs.

JUDIS