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*S. Gupta*

*Before Permod Kohli, J.*

**Dr. DARSHAN SINGH—Petitioner**

*versus*

**STATE OF PUNJAB AND ANOTHER—Respondents**

**CWP No. 14309 of 2010**

May 11, 2011

*Constitution of India, 1950 - Art. 226 - Punjab Civil Services (General Conditions of Service) Rules, 1994 (as amended on 18th December, 2001) - Rules. 6,18 - Punjab Animal Husbandry (Class-I) Service Rules, 1996 - Rules 5(3),7 - Punjab Civil Services (Punishment & Appeal) Rules, 1970 - Rule 8 - Promotion sought on the basis of seniority-cum-merit and eligibility - Whether criteria for promotion is "merit-cum-seniority" or "seniority-cum-merit" - Respondent had overtaken petitioner in promotion notwithstanding the seniority of petitioner - Petition dismissed holding that in case of variance or conflict between specific Rules with regard to method of recruitment, educational qualification and experience etc., general conditions of service would prevail.*

*Held, that the settled law is that when a service is constituted and established by any specific service/recruitment Rules, the conditions of service of the members thereof are governed and regulated by such recruitment/service rules framed under proviso to Article 309 of the Constitution of India.*

(Para 10)

*Further held*, that in the present case, Rule 7 of Animal Husbandry Rules itself directs the application of 1994 Rules in respect of such matters as are not specifically provided in the 1996 Rules. Thus, when 1996 Rules were framed, the Rule making authority was conscious of the existence of 1994 Rules which may have the effect of even exclusion of specific service rules. In absence of any specific provision in the recruitment Rules, i.e. Animal Husbandry Rules, the 1994 Rules would prevail by virtue of Rule 7 of Animal Husbandry Rules.

(Para 16)

*Further held*, that in case of any variance or conflict between the specific Rules in regard to the method of recruitment, educational qualification and experience etc., the general conditions of service would prevail. The position is further strengthened by virtue of Rule 20 of the general and common conditions of service rules which gives over-riding effect to common conditions of service rules over all other rules.

(Para 17)

*Further held*, that in view of the common conditions of service rules, it was discovered that the respondent had overtaken the petitioner in promotion notwithstanding the seniority of the petitioner over and above the Respondent.

(Para 19)

Petition dismissed.

Rajiv Atma Ram, Sr. Advocate with Nikhil Chopra, Advocate, *for the petitioner*.

Chetan Mittal, Addl. A.G., Punjab.

R.N. Raina, Advocate with Vivek Sharma, Advocate for respondent No. 2.

#### **PERMOD KOHLI J. (ORAL)**

(1) Petitioner is aggrieved of the order dated 14th December, 2009 passed by the Government Department of Animal Husbandry, Fisheries and Dairy Development, Punjab appointing respondent No. 2 as the Director.

Annual Husbandry, Punjab and reliving the petitioner from the additional charge of the Director, Animal Husbandry. A further direction is sought in the nature of Mandamus for appointment of the petitioner on promotion to the post of Director, Animal Husbandry in view of his seniority and eligibility for the post.

(2) Brief facts leading to the filing of this petition are being noticed hereunder :—

(3) Petitioner was appointed as Deputy Director by director recruitment on selection by the P.P.S.C. in the year 1990, whereas respondent No. 2 was appointed as Deputy Director vide order dated 2nd April, 1998. An FIR No. 419 was registered against the petitioner on 25th December, 1996 and he was placed under suspension. While the petitioner was facing trial, he was required to be considered along with private respondents for promotion to the post of Joint Director. A D.P.C. was held on 7th December, 2000 for according consideration for promotion. In view of the pendency of the criminal proceedings, petitioner's consideration was kept in a sealed cover. Petitioner came to be acquitted from the criminal charge vide judgement dated 24th December, 2002. He made a representation for opening of sealed cover and to give effect to the recommendations of the D.P.C. Receiving no response petitioner filed CWP No. 13120 of 2005. This petition was disposed of vide order dated 23rd August, 2005 with a direction to the respondent-State to take a final decision on the representation submitted by the petitioner by passing a speaking order. On consideration of the representation pursuant to the directions of the Court, respondents passed order dated 30th August, 2005 (Annexure P-4) rejecting the representation holding that petitioner was acquitted on technical grounds and it has been decided to re-examine the case through a regular department inquiry by issuing a charge sheet under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. Representation for treating the suspension period as duty period and promotion to the post of Joint Director was also filed. A separate charge sheet of the even date was also issued. Aggrieved of the action of the respondents, petitioner filed CWP No. 15064 of 2005. This petition was allowed vide judgement dated 24th July, 2006 and a direction was issued to the respondents to open the sealed cover to determine whether the petitioner has been found suitable for promotion to the post of Joint

Director, Animal Husbandry. It was further directed that in case the D.P.C. had concluded that the petitioner had fulfilled the prescribed bench mark, the respondents shall give effect to the same by promotion the petition in the year of re-framed seniority. This judgement was challenged by the State before the Hon'ble Supreme Court and the judgement of Division Bench was stayed. During the pendency of the S.L.P. before the Hon'ble Supreme Court, disciplinary proceedings against the petitioner were concluded and petitioner was awarded 'Censure'. On that basis the S.L.P. filed by the State was withdrawn. In the meantime, one Dr. Baljit Singh Sidhu who was holding the post of Director, Animal Husbandry, Punjab retired from the post but he was given extension with effect from 1st May, 2009 till further orders. The order of extension granted to Dr. Baljit Singh Sidhu was challenged by the petitioner in CWP No. 5962 of 2009 titled as Dr. Darshan Singh *versus* State of Punjab & others. Under the interim directions passed by the Court, extension granted to Dr. Baljit Singh Sidhu was cancelled vide order dated 30th July, 2009 (Annexure P-6/T) and by a separate order of the same date, the additional charge of the post of Director, Animal Husbandry was given to the petitioner was had been promoted as Joint Director in the meantime along with respondent No. 2 vide order dated 15th January, 2010 (Annexure P-8/T) retrospectively with effect from 7th December, 2000.

(4) It is not in dispute that as Joint Director petitioner was senior than respondent No. 2. During the pendency of the aforesaid petitioner a D.P.C. was held on 19th November, 2009 for according consideration for promotion to the post of Director. D.P.C. recommended respondent No. 2. According recommendations an order dated 14th December, 2009 impugned in this petition has been passed, whereby respondent No. 2 was promoted as Director.

(5) It seems that a review D.P.C. proceedings were also held on 21st May, 2010. The writ petition filed by the petitioner came to be disposed of by this Court vide order dated 29th July, 2010 holding that review D.P.C. proceedings held on 21st May, 2010 are not under challenge and so is the position with the order of promotion. Thus, the petitioner was granted liberty to challenge the D.P.C. proceedings and the appointment of respondent No. 3 therein as Director, Animal Husbandry. During the pendency of this writ petition, this court passed an interim order dated

11th May, 2010 with the consent of the parties that a fresh D.P.C. to fill up the vacancy of the Director shall be held for consideration of the eligible officers in the zone of consideration as on 1st May, 2008 and 31st July, 2009. The review D.P.C. referred to in the final order dated 19th July, 2010 was held in view of the above interim directions.

(6) Petitioner has challenged the appointment of respondent No. 2 as Director on the ground that the criteria adopted for promotion is in contravention to the statutory rules governing the appointment/promotion. It is contended by Mr. Rajiv Atma Ram, learned Senior Advocate that the statutory rules provide seniority-cum-merit as the sole criteria for promotion to the post of Director, whereas respondents have adopted the criteria of merit-cum-seniority.

(7) It is common case of the parties that the conditions of the service are regulated by statutory rules namely Punjab Animal Husbandry (Class-I) Service Rules, 1996. Though, the respondents have also relied upon the Punjab Civil Services (General and Conditions of Service) Rules, 1994. With a view to appreciate the contentions of the parties, it is necessary to consider the relevant statutory rules, governing the promotion to the post of Director.

“1. Short title, Commencement and application—(1) These rules may be called the Punjab Animal Husbandry (Class I) Service Rules, 1996.

(2) They shall be deemed to have come into force on and with effect from 15th February, 1990.

(3) Definitions :—In these rules, unless the context otherwise requires—

(E) “Service” means the Punjab Animal Husbandry, Class I Service.

**5. Method of appointment, educational qualifications and experience.**—Appointment to the service shall be made in the manner specified in Appendix ‘B’.

Provided that if no suitable candidate is available for appointment to a post in the Service by promotion, then such a post shall be filled in by direct appointment :

Provided further that if no suitable candidate is available or appointment to a post in the Service by promotion or by direct recruitment, then such a post shall be filled in by transfer of a person holding similar or identical post under the State Government or Government of India.

**7. Application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994.**—In respect of the matters which are not specifically provided in these rules, the members of the Service shall be governed by the provisions of the Punjab Civil Services (General and Common Conditions of Service), Rules, 1994 as amended from time to time.”

### Appendix 'B'

(See Rule 5(1))

#### I—Administrative Cadre

Sr. No.	Designation of Post	By direct	By promotion/	Direct	By promotion
1	Director Animal Husbandry	Nil	100 percent by promotion	(i) M. Sc. Degree from a recognized University or Institution in any of the branches of Animal Husbandry and veterinary Sciences and  (ii) Should have at least ten years experience in a responsible position of teaching research, administration or planning of live stock development.	From among the Joint Director of Administrative Cadre who have an experience or working as such for a minimum period of three years.

(8) Relevant extract from Punjab Civil Services (General & Common Conditions of Services) Rules, 1994 are reproduced hereunder :—

“1. **Short title, commencement and application.**—(1) These rules may be called the Punjab Civil Services (General and Common Conditions of Service), Rules, 1994.

2. They shall come into force at once.

3. They shall apply to all the posts in Class I, Class II and Class III services in connection with the affairs of the State of Punjab.

2. **Definitions.**—In these rules, unless the context otherwise requires;

(g) “Service” means any Class I service, Class II service or Class III services constituted in connection with the affairs of the State of Punjab;

(h) “Service Rules” means the service rules made under Article 309 of the Constitution of India regulating the requirement and conditions of service other than the general and common conditions of service of persons appointed to any service or post in connection with the affairs of the State of Punjab.

6. **Qualification etc.**—Subject to the provisions of these rules, the number and character of posts, method of recruitment and educational qualifications and experience for appointment to a post or posts in a Service and the departmental examination, if any, shall be such as may be specified in the Service Rules made for that service.

Original rules were amended vide Notification No. G.S.R. 115/Consts./Art. 309/Amd. (6) 2001 and No. G.S.R. 117/Const./Art. 309/Amd. (7)/2001. Vide these notifications, following amendments have been introduced :—

“**The 18th December, 2001**

**No. G.S.R. 115/Const/Art. 309/Amd. (6)/2001.**

2. In the preamble of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 for the figures, sign and words “Class I, Class II and Class III, the sign and words “Group ‘A’ Group ‘B’ and Group ‘C’ shall be substituted.

**“The 18th December, 2001**

**NO. G.S.R. 117/Const/Art. 309/Amd. (7)/2001.**

(ii) They shall be deemed to have come into force on and with effect from the 6th day of September, 2001.”

(9) Though, the amendment was made on 18th December, 2001, however, by virtue of sub rule 1(ii) of the amended rules the amendment has been made applicable with effect from the 6th day of September, 2001. The relevant clause giving retrospective operation to the rules reads as under :—

“The original Rule 18 of these rules was substituted vide 3rd Amendment to the rules by No. G.S.R. 117/Const./Art. 309/Amd. (7) 2001.

(ii) They shall be deemed to have come into force on and with effect from the 6th day of September, 2001.”

Amended Rule 18 reads as under :—

**“18. Promotion to Group A and Group B Services.—**(1) (a) For promotion to the post as Head of Department would be decided strictly on the basis of merit-cum-seniority as per the instructions issued by the Government from time to time. The minimum bench mark for promotion for such post would be ‘Very Good’. The officer who is graded as ‘Outstanding’ would supersede the officer graded as ‘Very Good’.

(b) For promotion to post falling in Group ‘A’ other than Head of Department the minimum bench mark will be ‘Very Good’ as per the instructions issued by the Government from time to time. There shall be no supersession on the basis of merit.

(c) For promotion to post falling in Group ‘B’ the minimum bench mark will be ‘Good’ and there shall be no supersession on the basis of merit.

**“20. Over riding effect.—**The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any rules for the time being in force for regulating the recruitment and conditions of service for appointment to public service and posts in connection with the affairs of the state.”



(10) It is settled law that when a service is constituted and established by any specific service/recruitment rules, the conditions of service of the members thereof are governed and regulated by such recruitment/service rules framed under proviso to Article 309 of the Constitution of India. In the instant case, specific service/recruitment rules have been framed namely the Punjab Animal Husbandry (Class-I) Service Rules, 1996 (herein after referred to as the '1996 Rules'). By virtue of sub rule (ii) of Rule 1, these rules have been given retrospective effect from 15th February, 1990. Rule 5 of these rules deals with the method of appointment, educational qualifications and experience. By virtue of these rules appointment to any cadre of service is to be made in the manner specified in Appendix 'B'. Sub rule (ii) of Rule 5 clearly prohibits appointment to the service unless a candidate possesses the qualification and experience in accordance with Appendix 'B'. Sub rule (3) of Rule 5 provides that the appointment by promotion to the service is to be made on the basis of seniority-cum-merit but no person can claim promotion on the basis of seniority alone. Thus, the criteria prescribed is seniority-cum-merit. Rule 7 of the aforesaid rule attracts the application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (herein after referred to as the '1994 Rules') in respect of the matters which are not specifically provided in these rules and to that extent the members of the service are to be governed by the 1994 Rules.

(11) On the basis of the provisions of the aforesaid rules, referred to herein above, it is vehemently argued on behalf of the petitioner that the petitioner, who is senior to the respondent No. 2 is entitled to be promoted on the basis of laid down criteria under the service rules i.e. seniority-cum-merit. It is, accordingly, contended that the petitioner indubitably is senior to respondent No. 2 and thus the denial of promotion to him on the ground of so called merit is in gross contravention to the mandate of the sub rule (3) of Rule 5 with renders the consideration by the D.P.C. and consequential order of promotion of respondent No. 2 as illegal, invalid and non-est in the eyes of law. To support his contention Mr. Rajiv Atma Ram, learned senior advocate appearing for the petitioner has referred to a judgment of this Court reported as *Dr. Ravi Dutt Mehra versus State of Punjab and others (I)*. In this case the promotion to the post of

Doctor Ayurvedic/Yunani Officer was made by superseding a senior Ayurvedic Medical Officer and promoting the junior invoking Clause (b) of Rule 18 of 1994 Rules and government instructions dated 6th September, 2001. Clause (b) of Rule 18 of the 1994 Rules lays down the criteria for promotion in respect to posts other than Head of the Department for which minimum bench mark will be 'Very Good' as per instructions issued by the Government from time to time. It is also prescribed that there shall be no supersession on the basis of merit. The writ petitioner in the aforesaid writ petition had secured 11 marks whereas the respondent in the said case had secured minimum prescribed 12 bench marks in terms of Government Instructions dated 6th September, 2001 and thus ignoring the seniority of the writ petitioner therein, his junior was promoted. This court while considering the question held that in presence of the specific service rules framed under proviso to Article 309, Government Instructions cannot be given any precedence and the statutory rules will prevail. Since the statutory rules did not prescribe any bench mark and the only criteria was merit-cum-seniority, appointment of the private respondent therein was set aside. However, the position in the present case seems to be different. In the present case the Government Instructions dated 6th September, 2001 have been adopted in the form of statutory rules vide G.S.R. No. 117 dated 18th December, 2001 by substituting Rule 18 of the 1994 rules. The fact that Government Instructions dated 6th September, 2001 were adopted in the form of statutory rules is evident from the amended statutory Rule 18. Even when the judgment in case of Dr. Ravi Dutt Mehra was delivered, this amendment had come into operation but not brought to the notice of the Court. Here there is an apparent conflict between Rule 5 read with Appendix 'B' of the 1996 Rules and 1994 Rules. Appointment of Director, Animal Husbandry is by promotion from the feeding channel i.e. the Joint Director, who has experience of working as such for a minimum period of 3 years. Some argument is sought to be raised by Mr. R.N. Raina, learned counsel appearing for respondent No. 2 in regard to the experience of the petitioner, however, this question is irrelevant in this petition as the claim of the petitioner has not been rejected for want of requisite experience but on the ground of possessing lesser merit than respondent No. 2. For this purpose amendment Rule 18 has been pressed into service by the official as also the private respondents. Thus, the controversy in the present petition would remain confined to the question

of criteria adopted by the D.P.C. for promotion to the post of Director i.e. whether rule of merit-cum-seniority or merit-cum-seniority would apply. Mr. Raina has also argued that respondent No. 2 has filed a separate writ petition challenging the experience of the petitioner on the date when the vacancy of Director became available.

(12) Since, this controversy is beyond the scope of this writ petition, and is not in issue, the same is not dilated upon or dwelled in this case. I would confine the adjudication only to the question whether merit-cum-seniority or merit-cum-seniority is the required criteria for promotion to the post of Director.

(13) Mr. Atma Ram's further contention is that service rules of 1996 would have precedence over the 1994 Rules. To strengthen his contention, he has referred to Rule 6 of 1994 rules which inter alia lays down that subject to the provisions of 1994 Rules the number and character of course, method of recruitment and educational qualifications and experience for the post or post in a service shall be as may be specified in the service rules made for that particular service. In sum and substance the contention is that even the 1994 Rules given over-riding effect to the service/recruitment rules and since sub rule (3) of Rule 5 of the 1996 Rules provides promotion to the Class-I post on the principle of seniority-cum-merit, aid of any other rule or government Instructions including the 1994 Rules is impermissible in law to either nullify the mandate of sub rule (3) of Rule 5 of 1996 rules or in variance thereof.

(14) Controverting the contention of the petitioner's counsel, Mr. Chetal Mittal, learned Addl. A.G., Punjab has defended the action of the respondent-State in promoting the respondent No. 2 by referring to amended rule 18 of the 1994 Rules. It is admitted position that original Rule 18 was substituted by 2001 amendment and the present Rule 18(a) specifically deals with the appointment to the post of Head of the Department. It is undisputed that the post of Director is a post of the Head of the Department in the Annual Husbandry Department of the State of Punjab. Rule 18 clearly and categorically lays down the criteria for promotion to the post of Head of Department i.e. merit-cum-seniority. It is further prescribed that the minimum bench mark for promotion for such post would be 'Very Good' and the officer who is graded as 'Outstanding' would supersede the officer graded as 'Very Good'. His contention is that

Rule 18 being a special rule which deals with the appointment of Head of the Department to any service, it would have an over-riding effect upon Rule 5(3) of 1996 Rules.

(15) Thus, the principle question which requires adjudication by this Court is whether Rule 18 of 1994 rules as amended vide amendment notification dated 18th December, 2001 would prevail is so far the appointment of Director, who is admittedly a Head of Department or the mandate of Rule 5 (3) of 1996 rules would remain in force despite the amendment.

(16) The controversy can be conveniently and effectively resolved by interpretation of the two sets of rules. No doubt, the specific service/ recruitment rules primarily and principally govern and regulate the service conditions of the members of service, however, if, the rule itself provides a window for application of any other rule or law, such other rule or law has also its application to the extent so permitted by such window or if, any other law or rule contained a clause or stipulation for superseding any other rule or law to the extent of effect of supersession, the other rule or law would prevail. It is in this legal scenario the two rules are to be examined. Rule 7 of the Animal Husbandry Rules itself directs the application of 1994 Rules in respect of such matters as are not specifically provided in the 1996 Rules. Thus, when 1996 Rules were framed, the rule making authority was conscious of the existence of the 1994 Rules which may have the effect of even exclusion of specific service rules. Though, 1994 Rules are common to all the services but contain some special provisions by virtue of Rule 7 of 1996 Rules. These common service rules have been specifically applied to the extent there is no provision in the 1996 Rules. It is indisputed that 1996 Rules do not contain any specific provision for the post of Head of Department. It is equally admitted position that the Head of Department as also the post of Joint Director are Class-I posts with new nomenclature as Class-A by virtue of 2001 amendment to the common service rules. In absence of any specific provision in the recruitment rules i.e. Animal Husbandry Rules, the 1994 Rules would prevail by virtue of Rule 7 referred to herein above.

(17) Apart from above Rule 6 of the 1994 Rules on which much emphasis has been laid by Mr. Atma Ram, itself provides that the method of recruitment and qualifications etc. as prescribed under the specifi service

rules are subject to the provisions of general and common conditions of service Rules, 1994. The opening sentence of Rule 6, thus reads "subject to the provisions of these rules". The service rules will govern the recruitment etc. Thus, where there is any variance or conflict between the specific rules or a service and the general and common conditions of service rules in regard to the method of recruitment, educational qualification and experience etc. the general and common conditions of service would prevail. This position is further strengthened by virtue of Rule 20 of the general and common conditions of service rules which give over-riding effect to the common conditions of service rules over all other rules to the extent there is any contrary provisions contained therein for regulating the recruitment and conditions of service for appointment to public service and posts in connections with the affairs of the State. The non-abstente clause in Rule 20 is sufficient enough to ignore any rule to the extent of inconsistency with the general and common conditions of service rules.

(18) Mr. Mittal, learned Addl. A.G., Punjab has also referred to a Division Bench judgment of this Court reported as 2003(2)SCT 113. In this case also the Hon'ble Division Bench was dealing with the promotion to the post of Chief Town Planner, which is, admittedly, a post of the Head of the Department. The issue was identical as in the present case whether the 1972 rules specifically for the Town Planning Service which provide for promotion non seniority-cum-merit would prevail or amended Rule 18 which deals specifically with the post of Head of Department would prevail. The Hon'ble Division bench held that Rule 18 of the general and common conditions of service would prevail over the service rules by virtue of Rule 20 of the 1994 Rules.

(19) From the minutes of the D.P.C. held on 19th November, 2009, it appears that four eligible candidate including the petitioner and respondent No. 2 were considered for promotion. The minimum bench mark on the basis of the Government Instructions were 15 as officers only with 'Very Good' rating could be considered. Record of preceding five years was considered. Petitioner had one 'Outstanding', three 'Very Good' and one 'Good' rating in 5 years preceding the date of consideration, whereas the respondent No. 1 had three 'Outstanding', one 'Very Good' and one 'Good' rating in preceding five years and he secured 17 bench marks and in view fo the amended Rule 18 of the general and common

conditions of service rules, respondent No. 2 has overtaken the petitioner in promotion notwithstanding the seniority of the petitioner over and above respondent No. 2.

(20) The grading awarded to the candidates is not disputed. Both the petitioner and private respondent were held eligible by the Committee. It is on account of the higher merit of respondent No. 2 that he has been promoted as Director (Head of the Department).

(21) In view of the above legal and factual position, I do not find any merit in this petition, which is, accordingly, dismissed, however, with no order as to costs.

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