

Before S. Muralidhar & Avneesh Jhingan, JJ.
ROHTASH KUMAR AND OTHERS—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

LPA No. 1787 of 2018

October 05, 2020

Haryana Transport Department, Haryana Roadways Service Rules, 1995—Recruitment as Station Supervisor—According to the rules and also as per advertisements, Graduates with Hindi/Sanskrit at Matriculation level, minimum five years experience in motor road transport government, semi government or public undertakings could be directly recruited as Station Supervisors—There was no requirement of supervisory experience in regards to direct recruits—The eligibility criteria in regards to experience required was changed on the completion of selection process—Held, the promotional eligibility criteria cannot be read into for direct recruitments—Amendment cannot be permitted at the end of selection process.

Held, that according to Appendix-B to the Rules and also as per the advertisement dated 10th July, 2015, a graduate with Hindi/Sanskrit at matriculation level having minimum 5 years' experience in Motor Road Transport Government, Semi-Government or public undertakings can be directly recruited as S.S. There is no requirement of supervisory experience.

(Para 12)

Further held, that The promotional eligibility criteria cannot be read into for direct recruitment. If the Rules had prescribed the eligibility criteria as being contended, the things would have been different but it is not the case.

(Para 14)

Further held, that there is another aspect of the matter, initially an advertisement in 2007 was given for directly recruiting S.S. and a clarification thereafter was issued with regard to experience in supervisory capacity. The advertisement was cancelled. The respondents faced a litigation which failed on a different ground. The posts were re-advertised in 2015. For almost 8 years, it was not deemed appropriate to amend the Rules to remove the alleged discrepancy between the criteria of direct recruits and through promotional channel.

Amendment cannot be permitted to be done by way of clarification.

(Para 19)

Sunil Nehra, Advocate, *for the Appellant* Nos. 1 and 20.

S.S. Duhan, Advocate, *for the Appellant* Nos. 2 to 19.

Ankur Mittal, A.A.G., Haryana.

AVNEESH JHINGAN, J.

(1) This intra-court appeal is against the order of learned Single Judge dated 8th October, 2018 dismissing the writ petition seeking direction to the respondents to declare the final result of interview conducted and quashing of letter dated 28th May, 2018 withdrawing the clarification dated 18th August, 2017.

(2) The facts relevant are that Haryana Staff Selection Commission ('H.S.S.C.') issued an advertisement on 10th July, 2015 for recruitment under various categories. For the present appeal, selection of Station Supervisor ('S.S.') is relevant.

(3) The appellants applied for the post of S.S., after appearing in the written examination on 18th December, 2016, they were called for interviews held on 30th December, 2017 and 14th February, 2018. Letter dated 28th May, 2018 was issued withdrawing the clarification dated 18th August, 2017 whereby the Director, State Transport had written to the Secretary, H.S.S.C., that for recruitment of S.S., experience of 5 years as Conductor, Driver, Steno, Clerk or any other post in Motor Road Transport Government or Semi-Government Department or Public Undertaking is required. Aggrieved by the stand of the respondents that for recruiting S.S., 5 years' experience in supervisory capacity in Motor Road Transport is needed, the appellants filed the writ petition.

(4) The post of S.S. is governed by Haryana Transport Department (Group-C) Haryana Roadways Services Rules, 1995 (for brevity 'Rules'). The Appendix-B to the Rules provides for academic qualification and experience for direct recruitment and for appointment other than direct recruits.

(5) The relevant portions of Appendix 'B' to the Rules and advertisement dated 10th July, 2015 are reproduced below:-

Appendix ‘B’ to the Rules

Sr. No.	Designation of posts	Academic Qualification and experience, if any, for direct recruitment	Academic Qualification and experience, if any for appointment other than by direct recruitment.	Remarks if any
1.	Station Supervisor	(i) Graduates (ii) Minimum five year experience in Motor Road Transport Government, or Semi-Government Departments or public undertakings	(i) Matriculation with Hindi (ii) Five years experience as a Chief Inspector, Welfare Inspector in Haryana Roadways.	

Relevant portion of advertisement

“Transport Department, Haryana

Cat. No.22 38 posts of Station Supervisor (Re-Advertised) (GEN=11, SC=5, BCA=4. BCB=3. SBC=3, EBPB=4, ESM-GEN=3, ESM-SC=1, ESM-BCA=1, ESM- BCB=1, OSP-SC=1, OSP=BCA=1) Total 38 (PHC OH=1)

E.Q. i) Graduate

ii) Minimum five year experience in Motor Road Transport Government or Semi-Government Department or Public Undertaking.

iii) Hindi/Sanskrit upto Matric Standard or higher education.

Age :18-42

Pay Scale: Rs. 9300-34800 + Rs. 3600GP”

(6) Before learned Single Judge, the stand taken by the respondents was that though there is no mention of ‘supervisory experience’ in the Rules but keeping in view the duties and responsibilities of the post, impugned instructions were issued to clarify

the position. The clarification is in consonance with the view taken by this Court relying on the affidavit filed by the respondents in CWP No.2002 of 2011 *Naresh Kumar versus State of Haryana and others*, decided on 17th May, 2012. Though the learned Single Judge noted that promotion rules are not relevant for direct recruitment of S.S., yet compared the two and upheld the requirement of 5 years' supervisory experience for direct recruitment to the post of S.S. It was further held that instructions can be issued to tone up the rules without destroying the basic element and making it relevant and in line with the public interest.

(7) While issuing notice of motion in the appeal, interim direction was issued that appointment made in pursuance of advertisement shall abide by the result of this petition. During the pendency of the appeal, in compliance with the direction of this Court dated 11th August, 2020, an affidavit dated 12th March, 2020 of Dr. Varinder K. Dahiya, Director State Transport, Haryana was filed.

(8) Learned counsel for the appellants contended that the appellants duly fulfilled the eligibility criteria as per the rules and advertisement. The experience clause could not have been changed at later stage. The case set up is that administrative orders cannot over ride the statutory rules. It is submitted that learned Single Judge erred in placing reliance on the decision on the decision of this Court in *Naresh Kumar* (*supra*) and LPA No.1519 of 2012 decided on 8th November, 2012.

(9) Learned counsel for the State defended the action of the respondents, stating that supervisory experience was required for the post of S.S. The contention is that if the qualifications for promotional post vis-à-vis direct recruits are compared, the Chief Inspector having 5 years' experience and Matriculation with Hindi is eligible for promotion to the post of S.S. For Conductors, Chief Inspector is the 3rd promotion, before that he is promoted to Sub-Inspector, then to Inspector and thereafter, Chief Inspector. For each promotion there is requirement of 5 years' experience. The argument is buttressed stating that if the contention of the appellants are accepted, the Conductors having 5 years' experience can directly be recruited S.S.

(10) Before proceeding further, it would be apt to discuss the three letters/ clarifications being referred. In 2007, a clarification was issued when the posts for S.S. were advertised, to state that five years' experience in 'supervisory capacity' is required for direct appointment to the post of S.S. On 18th August, 2017, Director, State Transport,

Haryana wrote letter to Haryana Staff Selection Commission clarifying that “*experience of conductor, driver, steno and clerk or any post in Transport Department/ Semi-Government is eligible i.e. 5 years experience in motor road transport Government and Semi-Government department or public undertaking.*” The advertisement of 2007 was cancelled as no eligible candidate was available and the posts for S.S. were re-advertised in 2015. During the pendency of the result, one of the candidate who was aggrieved of not being invited for interview filed C.W.P. No. 10754 of 2018-***Sandeep versus State of Haryana and others***, raising a grievance that the candidates serving as Conductor could not have been invited for interview as they were not possessing the experience in ‘supervisory capacity’. It was during the pendency of the writ petition that letter dated 28th May, 2018 was issued withdrawing the clarification dated 18th August, 2017. In this letter, it was stated that though the Rules provide only for five years’ experience in Motor Road Transport for direct recruitment to the post of S.S. but when compared with the promotional channel, the experience of supervisory nature is justified. Further that similar letter was issued on 22nd August, 2007 clarifying that for recruitment to the post of S.S. experience in ‘supervisory capacity’ is required. Affidavit filed in ***Naresh Kumar*** (supra) was based on the said letter.

(11) Before dilating upon the issuance of clarification and its withdrawal, it would be necessary to consider the eligibility criteria as per the Rules.

(12) According to Appendix-B to the Rules and also as per the advertisement dated 10th July, 2015, a graduate with Hindi/Sanskrit at matriculation level having minimum 5 years’ experience in Motor Road Transport Government, Semi-Government or public undertakings can be directly recruited as S.S. There is no requirement of supervisory experience.

(13) As per the Rules, Group-C services have been divided as ministerial staff, operation staff and technical staff. The ‘operation cadre’ consists of eleven posts including Conductors. The affidavit dated 12th March, 2020 of Dr. Varinder K. Dahiya, Director, State Transport, Haryana states that the experience gained on the operational post relates to Motor Road Transport. The relevant portion is extracted below:-

“3. That the experience which has been sought is of working on the posts under Government or Semi-Government Department or Public Undertakings which are relating to

Motor Road Transport. Therefore, the experience gained while working on a post involving the field of transportation through roads by the motorized vehicles would be sufficient involving supervisory duties are as per the requirement of the post. Haryana Roadways is a State Transport Undertaking and it has a fleet of around 3600 at present. The buses (Transport Vehicles) are plied on intra and inter State routes through Drivers and Conductors, recruited on regular/temporary basis. The buses are operated from bus stands/stops in Haryana. Though the posts could not be summarized exhaustively, however, while operating the buses there is a separate operational staff in the Haryana Roadways. In operation of the buses on the road, the operational staff i.e. Driver, Conductor, Booking Clerk, Sub- Inspector, Inspector, Yard Master, Chief Inspector and Station Supervisor has been deputed in Haryana Roadways and the experience gained on these posts is relating to Motor Road Transport.”

(14) The contention of the respondents to support the need of supervisory experience, based upon the eligibility criteria for promotion to S.S., is not well founded. The unambiguous eligibility qualifications for direct recruits have been laid down in the Rules. The promotional eligibility criteria cannot be read into for direct recruitment. If the Rules had prescribed the eligibility criteria as being contended, the things would have been different but it is not the case.

(15) Supreme Court in *K. Manjusree versus State of Andhra Pradesh and another*¹ held that the rules of the game cannot be changed afterwards. The Court was considering whether change in the criteria whereby minimum qualifying marks for interview were introduced after completion of process was justified. The Court held as under:-

“But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The

¹ (2008) 3 SCC 512

previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them *P. K. Ramachandra Iyer v. Union of India* 1984 (2) SCC 141, *Umesh Chandra Shukla v. Union of India* 1985 (3) SCC 721, and *Durgacharan Misra v. State of Orissa* 1987 (4) SCC 646.”

(16) In the case in hand on the pretext of withdrawing letter dated 18th August, 2017 the eligibility criteria i.e. experience required was changed and that too on completion of the selection process.

(17) The reliance by the respondents on the decision in the *Naresh Kumar (supra)* is misplaced. The respondents advertised the posts of S.S., on 22nd August, 2007 prescribing the age limit of 18 to 40 years. The advertisement was aborted due to non-availability of eligible candidates. The cancellation was challenged by filing a writ petition, in which an affidavit was filed by the respondents stating that the petitioner was over age on the cut-off date and was not eligible. Reliance was also placed on clarification dated 19th December, 2007 to state that the petitioner never possessed 5 years’ experience in supervisory capacity being a Conductor, hence was not eligible. In view of the fact that the petitioner was over age, the writ petition was dismissed. The intra- court appeal also met with the same fate. The Court neither had the occasion to consider the validity of clarification nor its effect vis-à-vis the advertisement and the Rules.

(18) The clarification dated 18th August, 2017 or the letter dated 28th May, 2018 would not be relevant as the Rules clearly laid down the eligibility criteria.

(19) There is another aspect of the matter, initially an advertisement in 2007 was given for directly recruiting S.S. and a clarification thereafter was issued with regard to experience in

supervisory capacity. The advertisement was cancelled. The respondents faced a litigation which failed on a different ground. The posts were re-advertised in 2015. For almost 8 years, it was not deemed appropriate to amend the Rules to remove the alleged discrepancy between the criteria of direct recruits and through promotional channel. Amendment cannot be permitted to be done by way of clarification.

(20) It is trite law that administrative instructions can fill up the gaps in statutory rules but cannot be contradictory thereof, as held by Constitution Bench of Supreme Court in *Sant Ram Sharma versus State of Rajasthan*² and reiterated in *Union of India versus K.P. Joseph*³. Supreme Court in *Dhananjay Malik and others versus State of Uttaranchal and others*⁴, while dealing with selection of Assistant Teachers quoted the relevant paras of these two judgments and the same are reproduced below:

“14. A constitution Bench of this Court in *Sant Ram Sharma v. State of Rajasthan*, has pointed out at AIR p. 1914 that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

15. The aforesaid ruling has been reiterated in para 9 of the judgment by a three-Judge Bench of this Court in *Union of India v. K. P. Joseph* as under:

“9. Generally speaking, an administrative order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in *Sant Ram Sharma v. State of Rajasthan* that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.”

² AIR 1967 SC 1910

³ (1973) 1 SCC 194

⁴ (2008) 4 SCC 171

(21) Present is not a case of filling up the gaps by administrative instructions but rather changing the eligibility criteria as prescribed in the Rules. In other words amending the Rules and that too when the selection procedure was complete.

(22) The appeal is allowed. The judgment of the learned Single Judge is set aside. The respondents are directed to consider the cases of the appellants for appointment as Station Supervisors on the basis of the eligibility qualifications provided in the advertisement and the Rules, as explained in this judgment and if found eligible to appoint them as such. The exercise be completed within a period of twelve weeks.

Payel Mehta