

Ram Lal Aggarwal *v.* The State of Punjab, etc. (Sandhwalia, J.)

CIVIL MISCELLANEOUS

*Before R. S. Narula and S. S. Sandhwalia, JJ.*

RAM LAL AGGARWAL,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

**Civil Writ No. 314 of 1966.**

August 14, 1968

*Punjab Civil Services Rules, Volume I, Part I—Rule 4.13—Note 4—“Next below rule” —Definition and scope of—Notes to the Service Rules—Whether statutory and justiciable.*

*Held*, that note 4 to Rule 4.13 of Punjab Civil Service Rules Volume I Part I, elaborates what is well-known in official parlance as the “next below rule”. No precise definition of this rule need be laid down. However, what is intrinsically indicated by the “next below rule” is that an officer out of his regular line (including deputation; etc.), is entitled to be promoted and shown as holding a higher post in the parent department if the Government servant next below him has been so promoted. This rule ensures to the officer within his regular line or serving on deputation in another department that he shall be resolved to the position he would have occupied in his parent department had he not been so deputed. It clearly emerges from the previous Note 4 (though the language is rather obscure) that it is directed to protect the interest of an officer who though entitled to officiating promotion cannot in fact avail of the opportunity due to his being, what the rule states as out of the “regular line” or outside the ordinary line of service. The provisions of Note 4 further provide that the proper course should be to make arrangements to enable those officers, who are out of the regular line or on deputation to other departments, to be released from such special posts in order not to deprive them of the chances of officiating promotions which may accrue to them for a substantial period. This a requirement is cast on the Government to arrange to recall an officer to whom a chance of officiating promotion is likely to accrue. However, it is provided that where in public interest or other exigencies of service, an officer cannot be recalled then in such a case he would be entitled to be compensated by the parent department with the pay of the higher paid post. In substance, therefore, the provisions of Note 4 imply that either the Government recalls an officer eligible for officiating promotion back to the regular line or failing that, provision is made for compensating such an officer if he is not, or cannot be so recalled.

(Para 11)

*Held*, that notes to Punjab Civil Services Rules have the same force as the statutory rules themselves and any infringement thereof would be clearly justiciable by the High Court.

(Para 10)

*Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari mandamus or any other appropriate writ order or direction be issued quashing the Notification No. 10962-5GSI-6A/1330, dated the 14th January, 1965, in respect of the petitioner; further praying that the petitioner be treated in the Superior Judicial Service, from 11th May, 1959 to 18th October, 1960 and the emoluments be paid.*

J. N. KAUSHAL, SENIOR ADVOCATE M. R. SHARMA, ADVOCATE, WITH HIM, for the Petitioner.

R. S. MONGIA, ADVOCATE FOR ADVOCATE-GENERAL, PUNJAB, for the Respondents.

#### JUDGMENT

SANDHAWALIA, J.—The petitioner in this writ petition under Article 226 of the Constitution of India is a retired District and Sessions Judge and is now practising as an Advocate in this High Court. He joined the Provincial Civil Service (Judicial) on the 1st of April, 1932 and was promoted as an Additional District and Sessions Judge in November, 1953. He was confirmed in the Superior Judicial Service (Substantive Permanent) with effect from 29th of July, 1958. During the year 1955, while the petitioner was working as an Additional District and Sessions Judge, Ferozepore, his services were lent by the Punjab Government to the Government of India, Ministry of Rehabilitation. In consequence thereof, he took charge as an Officer on Special Duty-cum-Appellate Officer at Delhi on the 31st of October, 1955 and later on he was also appointed as Deputy Custodian-General in addition to the other duties. He was subsequently posted as Additional District and Sessions Judge on the 30th of September, 1959 at Delhi being on deputation to the Delhi Administration. On recall by his parent Department from the Delhi Administration, he was then posted as District and Sessions Judge, Jullundur where he joined on 19th of October, 1960 and retired from that post on the 20th of October, 1962.

Ram Lal Aggarwal *v.* The State of Punjab, etc. (Sandhawalia, J.)

(2) A vacancy had occurred in the Superior Judicial Service (Selection Grade) on the 11th of May, 1959 and the case of the petitioner is that he was fully eligible for appointment thereto. However, as he was working outside the State of Punjab, being on deputation to the Delhi Administration at the relevant time, Sarvshri Badri Parshad Puri and Hans Raj, both of them being junior to the petitioner in the list of seniority in the Judicial Service, were appointed to officiate in that vacancy from the periods from 11th of May, 1959 till 24th of September, 1959 and 25th of September, 1959 to 18th of October, 1960, respectively.

(3) The petitioner on the above basis had represented that he was entitled to be promoted to the Selection Grade of the Superior Judicial Service with effect from 11th of May, 1959. However,—*vide* notification No. 10962-5GSI-64/1350, dated the 14th January, 1965, which is Annexure 'A' to the petition, the petitioner was shown to be promoted to the Selection Grade with effect from the 19th of October, 1960 and not from the 11th of May, 1959 when the vacancy did in fact occur. That thereafter the petitioner made a representation to the Punjab Government, dated the 11th of February, 1965 through the Registrar of the Punjab High Court, Chandigarh claiming the grant of the selection grade with effect from 11th of May, 1959 and in the alternative that he should be granted the higher pay of the selection grade for that period. This representation, however, was rejected by the Government,—*vide* their letter No. 26145-Gaz/V.I.F. 9, dated the 25th of October, 1965, which appears as Annexure 'B' to this petition.

(4) The facts are hardly in dispute. Respondents Nos. 2 and 3, being the Union of India and the Delhi Administration, have not filed any written statements nor any appearance has been made before us on their behalf. The case of the petitioner has thus been contested on behalf of the State of Punjab who have filed a return and the learned counsel on their behalf has strenuously opposed the issuance of the writ, which has been prayed for in the petition. It has, however, been conceded that if the petition was to be allowed, compensation in shape of payment for higher emoluments accruing to the petitioner will have to be payable by Respondents Nos. 2 and 3.

(5) In substance the case of the petitioner, which has been strenuously urged before us, is that if he had been serving in the State of Punjab on the 11th of May, 1959, he was entitled to be

appointed to the Selection Grade of the Superior Judicial Service. Since, however, he was posted to Delhi on deputation to the Delhi Administration and in fact could not return to the Punjab due to the exigencies of service and under the orders of the Government of Punjab, he has been, without any default on his part, denied the right to be so appointed and the emoluments thereof are being wrongfully withheld from him.

(6) Mr. J. N. Kaushal, the learned counsel for the petitioner, has firstly pointed out that the post of the District and Sessions Judge (Selection Grade) is one which is enumerated in the schedule to rule 4.13 of the Punjab Civil Services Rules, Volume I, Part I (hereinafter called the Rules) and thus satisfies the requirements of the said rule. Elaborating his arguments, he has placed reliance on Note 4 to rule 4.13 and the various sub-clauses of the said Note and has submitted that the notes to the rules are part and parcel of the statutory rules and have identical force in the eye of law. As such he argues that violation of the said rules is justiciable. Relying on the provisions of Note 4(i) and sub-clauses (1) to (5) thereof. Mr. Kaushal has contended that the petitioner thus fell wholly within the ambit of the provisions of Note 4 and what in official parlance is called the "next below rule". He, however, has submitted that the petitioner now having retired from the service, the provisions of Note 4(iii), (iv), and (viii) are clearly attracted and he is thus entitled to be compensated in the form of payment of the emoluments which the petitioner would have drawn had he been given the Selection Grade with effect from the 11th of May, 1959. He has further argued that even in view of the position in the return by the respondent, the orders of the State Government pleaded in defence are not applicable to the right of compensation and as such the petitioner is entitled thereto.

(7) Two alternative arguments have also been raised on behalf of the petitioner. It is argued that all the persons senior to the petitioner in the judicial Service who were also not in the ordinary line of service and serving out of the State of Punjab, have been accorded the benefits of the Selection Grade by the respondents themselves. Further, it is submitted that Sarvshri Badri Parshad Puri and Hans Raj, who were junior to the petitioner, have also been accorded a similar benefit and as such clearly all the conditions of the "next below rule" are satisfied. The submission further is that

Ram Lal Aggarwal *v.* The State of Punjab, etc. (Sandhawalia, J.)

even if technically in all the requirements thereof are not so satisfied, there is nevertheless no ground for any invidious distinction in the case of the petitioners when persons both senior to the petitioner as well as junior to him have been accorded the benefits which would accrue to them under the provisions of the "next below rule." In this very context, it is further submitted that Shri Hans Raj admittedly has been accorded the benefit of the Selection Grade in conditions indetical with those of the petitioner and in his case the State Government has thus placed a construction on this rule which the petitioner wants them to place. As such there is no warrant to have one interpretation of the same rule qua Shri Hans Raj and another qua the petitioner.

(8) In reply, Mr. Mongia, the learned counsel on behalf of the State of Punjab, has strenuously argued that because of the petitioner's desire to remain for a short-while in Delhi to complete the education of his son, he has thereby forfeited the benefit of the rule which would have accrued to him. His second contention, which he had advanced equally forcefully, is that under the orders of the Punjab Government the benefit of the "next below rule" is to be accorded only to as many incumbents as there are vacancies. He thus, submits that the petitioner being lower down in the list of seniority is not entitled to the benefit and the same could be enjoyed only by persons at No. 1 or No. 2, in order of seniority. Mr. Mongia had also placed reliance on *the State of Mysore v. M. H. Bellary* (1).

(9) The case of the petitioner, therefore, vests on the interpretation that is to be placed on rule 4.13 of the Punjab Civil Services Rules, Volume I, Part I and particularly the relevant part on the determination of which the case will turn is Note 4 to the said rule. Note 4 is in the following terms:—

"Note-4(i) Punjab Government have sanctioned the adoption of the following guiding principles for purpose of clarifying the position and for the working of the convention usually known as the "next below rule":—

(1) A Government servant out of his regular line should not suffer by forfeiting officiating promotion which he

(1) AIR. 1965 S.C. 868.

would otherwise have received, had he remained in his regular line.

- (2) The fortuitous officiating promotion of some one junior to a Government servant who is out of the regular line does not in itself give rise to a claim under the next below rule.
- (3) Before such a claim is established, it should be necessary that all the Government servants senior to the Government servant who is out of the regular line have been given officiating promotion.
- (4) It is also necessary that the Government servant next below him should have been given promotion, unless in any case the officiating promotion is not given because of inefficiency, unsuitability or leave.
- (5) In the event of one or more of the three bars mentioned above, of being applicable to the Government servant immediately below the Government servant outside his regular line, the same Government servant even more junior should have received officiating promotion and the Government servants, if any, in between that should have been passed over for one of these reasons."

That these notes are part and parcel of the statutory rules is no longer in doubt. In *State of Punjab and others v. Shrimati Shanti Sidhu* (2), a Division Bench of this Court consisting of Mehar Singh, C.J., and D. K. Mahajan, J., has observed as follows:—

"The learned counsel for the appellants first contends in this respect that the note is not a part of the rule, but in this he is mistaken because the notes are as much official publication and authentic part of the rule as the rules themselves."

(10) It is thus clear that the notes to the rules have the same force as the statutory rules themselves and any infringement thereof would be clearly justiciable by this Court. In fact this

**Ram Lal Aggarwal v. The State of Punjab, etc. (Sandhawalia, J.)**

---

position has not now been controverted by the learned counsel for the respondents.

(11) Note 4 quoted above elaborates what is well-known in official parlance as the "next below rule". Though the import of this rule is well-understood in service rules all over the country, yet no definition thereof appears in the Punjab Civil Services Rules. No precise definition of this rule need be laid down. However, what is intrinsically indicated by the "next below rule" is that an officer out of his regular line (including deputation, etc.), is entitled to be promoted and shown as holding a higher post in the parent department if the Government servant next below him has been so promoted. This rule ensures to the officer within his regular line or serving on deputation in another department that he shall be restored to the position he would have occupied in his parent department had he not been so deputed. Though the language in which the provisions of Note 4 are touched is rather ambiguous, yet it clearly emerges therefrom that it is directed to protect the interests of an officer who though entitled to officiating promotion cannot in fact avail of the opportunity due to his being, what the rule states as out of the "regular line" or outside the ordinary line of service. The provisions of Note 4 further provide that the proper course should be to make arrangements to enable those officers, who are out of the regular line or on deputation to other departments, to be released from such special posts in order not to deprive them of the chances of officiating promotions which may accrue to them for a substantial period. Thus a requirement is cast on the Government to arrange to recall an officer to whom a chance of officiating promotion is likely to accrue. However, it is provided that where in public interest or other exigencies of service, an officer cannot be recalled then in such a case he would be entitled to be compensated by the parent department with the pay of the higher paid post. In substance, therefore, the provisions of Note 4 imply that either the Government recalls an officer eligible for officiating promotion back to the regular line or failing that provision is made for compensating such an officer if he is not, or cannot be so recalled.

(12) Admittedly, the petitioner has a distinguished service record and there is no blemish whatsoever on that score. None of the bars enumerated in Note 4 can possibly apply to the case of the petitioner and indeed it is not the case of the respondents that

they do. Thus the case of the petitioner falls clearly within the ambit of Note 4(i) and he would thus be entitled to the benefits which must necessarily accrue by the application of the "next below rule".

(13) Mr. Mongia, the learned counsel for the respondent, has then argued that even though the provisions of the rule were applicable to the case of the petitioner, he has himself waived or forfeited the right thereto. He has argued strenuously that the petitioner in his demi-official letter dated the 2nd of June, 1959 had requested that on his return from the Ministry of Rehabilitation, he should preferably be posted to Delhi as his son was taking training as a Chartered Accountant at Delhi and there was no hostel accommodation for such training. He submits that since the petitioner was posted for some time as an Additional District and Sessions Judge in Delhi from 13th September, 1959, he should thus be deemed to have waived his right to the benefits of the "next below rule."

(14) There is hardly any force in this contention. The request of the petitioner for a posting at Delhi was an innocuous one in the ordinary course of service. The petitioner was never expressly recalled nor at any stage did he decline to go back to his parent department. It was never the case of the respondent that the petitioner, even on being informed that he would lose the benefits of the Selection Grade, declined to return to service in the State of Punjab. Therefore, it is patent that at no stage did the petitioner, even remotely, suggest that he would forego the benefits of the Selection Grade which were in fact very important to the petitioner as the difference in the emoluments of the two grades was in fact very substantial.

(15) It is further noticeable that at the crucial date the seniority of the incumbents on 11th of May, 1959 stood as follows:—

<i>S. No.</i>	<i>Name of the officer</i>	<i>Remarks</i>
1.	Shri (now Hon'ble Mr. Justice Hans Raj Khanna).	On deputation as District and Sessions Judge, Delhi up to 5th May, 1962 and appointed as Additional Judge, Punjab High Court, with effect from 7th May, 1962.

Ram Lal Aggarwal v. The State of Punjab, etc. (Sandhwalia, J.)

---

2. Shri (now Hon'ble Mr. Justice P. D. Sharma). On deputation as Secretary (Law and Judicial), Delhi Administration up to 31st May, 1960 and retired from the Punjab Superior Judicial Service on 1st June, 1960.
3. Shri Rameshwar Dial. Not considered fit for promotion to the Selection Grade in the Punjab Superior Judicial Service.
4. Shri P. P. R. Sawhny. On deputation as Additional District and Sessions Judge up to 2nd October, 1959 and as Registrar, Punjab High Court from 4th October, 1959 and again as District and Sessions Judge, Delhi from 25th June, 1962 on wards.
5. Shri Balwant Singh Kalkat. On deputation as Secretary, Hindustan Steel Ltd. from 16th July, 1958 and on leave preparatory to retirement with effect from 16th February, 1961.
6. Shri Ram Lal Aggarwal. On deputation to the Government of India (including joining time) up to 29th September, 1959 and as Additional District and Sessions Judge, Delhi (including joining time from 10th to 18th October, 1960) from 30th September, 1959, to 18th October, 1960.  
Posted as District and Sessions Judge, Jullundur on 19th October, 1960.
7. Shri Behari Lal Goswami. Not considered fit for promotion to the Selection Grade in the Punjab Superior Judicial Service.

8. Shri Hans Raj. On leave from 1st April, 1959 to 29th July, 1959. On deputation as Additional District and Sessions Judge, Delhi from 30th July, 1959 to 24th September, 1959 (including joining time from 17th to 24th September, 1959) posted as District and Sessions Judge, Rohtak on 25th September, 1959.
9. Shri Gulal Chand Jain. Not considered fit for promotion to the Selection Grade in the Punjab Superior Judicial Service.
10. Shri Badri Parshad Puri. Remained posted throughout in the Punjab.

(16) In the replication to the affidavit filed by Respondent No. 1, it has been expressly averred that Shri P. D. Sharma (now Mr. Justice P. D. Sharma) and Shri P. P. R. Sawhny had been given the benefit of the "next below rule" with effect from the 11th of May, 1959. It was pointed out that as a matter of fact they had been allowed the emoluments and benefits of the Selection Grade District and Sessions Judges during this period and, therefore, the requirements of rule 4.13 and the notes thereunder had been satisfied too. This fact has not been controverted by the learned counsel for the respondents. The position, therefore, is that persons senior to the petitioner who were identically situated in the sense that they were also not serving at the relevant time within the State of Punjab have been accorded the benefits under the rule. Similarly, it is the admitted position that persons junior to him, namely, Sarvshri Badri Parshad Puri and Hans Raj have also enjoyed the benefits of the Selection Grade between the period of 11th of May, 1959 and 18th of October, 1960. One fails to see, by what logic possibly, can the petitioner be denied his right to the Selection Grade in these circumstances.

(17) It is also noticeable from the above facts that in fact the benefits of the rule have been accorded to a number of officers much larger than the vacancies which had arisen in the Selection Grade of the Superior Judicial Service. This being the factual position, the

Ram Lal Aggarwal *v.* The State of Punjab, etc. (Sandhawalia, J.)

---

contention of the learned counsel for the respondents that the petitioner would not be entitled to the benefits because he was not at No. 1 or No. 2 of the list of seniority of the Superior Judicial Service Officers must necessarily fail.

(18) The learned counsel for the petitioner has rightly emphasised that the petitioner having retired, the benefit of actually officiating in the Selection Grade for the relevant time cannot possibly be enjoyed by him any longer. He had, therefore, rightly pressed the case of the petitioner for being compensated under the provisions of Note 4 (iii), (iv), (v) and (viii) which are in the following terms:—

“(iii) In cases where an officer is deprived of officiating promotion to a higher paid post owing to it being impracticable for the time being to release him from the special post outside the ordinary line no compensation shall be granted in respect of the first three months of his retention in the lower paid post unless the conditions of the next below rule are satisfied.

(iv) In cases where the period for which officiating promotion is lost exceeds three months the officer concerned may be granted the pay of the higher paid post for the excess period but arrangements should be made wherever possible to avoid depriving officers of lengthy period of officiating promotions.

(v) Save in exceptional circumstances, no officer to whom the next below rule would apply should be retained in a lower paid post for more than six months beyond the date on which he becomes entitled to officiate continuously in higher post.

(viii) In the case of officers, who in the public interest have to be deprived of officiating promotions whether they are serving outside the ordinary line or in the ordinary line and in which case the conditions laid down in the next below rule are not satisfied, the instructions contained in clauses (iii) and (iv) above will apply.”

(19) A perusal of these provisions makes it clear that in a case identical with that of the petitioner, provisions for compensation has been expressly provided therefor. Another test which is crucial for the application of the "next below rule" is whether an officer, who is immediately next in the order of seniority, has been promoted to the higher paid post or not? In the case of the petitioner, this test is also amply satisfied. In this context, the observations in *The State of Mysore v. M. H. Bellary* (3), are instructive. Their Lordships of the Supreme Court were construing a similar provision in the Bombay Civil Service Rules, allied to the "next below rule"; therein the following observations appear:—

"So long, therefore, as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that that satisfactory service and the manner of its discharge in the post he actually fills should be deemed to be rendered in the parent department also so as to entitle him to promotions which are open on seniority-cum-merit basis."

(20) In view of the above, this petition must succeed and is allowed. A Writ of *mandamus* is directed to issue to Respondents Nos. 2 and 3 to pay the emoluments to the petitioner of the Superior Judicial Service (Selection Grade) from 11th of May, 1959 to 18th of October, 1960. In the circumstances of the case, however, there will be no order as to costs.

R. S. NARULA, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

*Before D. K. Mahajan and Prem Chand Jain, JJ.*

DWARKA DASS,—*Petitioner*

*versus*

THE SUPERINTENDENT OF POLICE, LUDHIANA AND ANOTHER,—

*Respondent*

**Civil Writ No. 800 of 1966**

August 20, 1968.

*Punjab Police Rules (1934)—Rules 12.2 and 12.22—Police constable having obtained certificate of appointment under rule 12.22—Whether can be dealt with*

(3) A.I.R. 1965 S.C. 868.