

March, 1983 passed by the Delhi High Court, which is admissible in evidence, the second marriage of Rajinder Singh with Smt. Pomila stands established and, therefore, the judgments relied upon by the counsel for the petitioners, are not applicable to the facts of the present case.

(17) In view of the above-mentioned discussion, Criminal Revision No. 302 of 1987 is dismissed.

J.S.T.

Before Hon'ble M. R. Agnihotri & R. S. Mongia, JJ.

P. N. SHARMA,—*Petitioner.*

versus

PUNJAB AND HARYANA HIGH COURT THROUGH ITS REGISTRAR AND OTHERS,—*Respondents.*

Civil Writ Petition No. 16589 of 1992

October 13, 1993.

Constitution of India, 1950—Art. 226 and 227—High Court Establishment (Appointment and Conditions of service) Rules 1973—Rule 8(ii) (b)—Promotion—Petitioner seeking promotion to post of Deputy Registrar retrospectively—Petitioner's name left out of consideration by Registrar while recommending case for filling vacancy—Held that once statutory rule provided for post of Deputy Registrar to be filled "by selection from amongst Assistant Registrars who are graduate and have experience of working as such for a minimum period of three years", it was duty of Registrar to consider all those Assistant Registrars who fulfilled requisite qualifications.

Held, that it is quite surprising that ever though the name of the petitioner was duly included by the Joint Registrar (Rules), amongst the five names of the Assistant Registrars, while forwarding the case to the Registrar, for considering them for promotion as Deputy Registrar yet the then Registrar omitted the name of the petitioner, from the list of Assistant Registrars to be considered for promotion as Deputy Registrar. Once the statutory rule provided, that the post of Deputy Registrar was to be filled "by selection from amongst the Assistant Registrars who are graduates and have experience of working as such for a minimum period of three years", it was the duty of the Registrar to consider all those Assistant Registrars who fulfilled the requisite qualifications.

(Para 6)

V. Ramswaroop, Advocate, for the Petitioner.

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate.

Vinod Sharma Advocate for added respondent.

S. C. Kapoor, Senior Advocate with Ashish Kapoor and Naresh Katyal, Advocates, for the Respondents.

JUDGMENT

M. R. Agnihotri, J.

(1) Petitioner, Mr. P. N. Sharma, Assistant Registrar has invoked the writ jurisdiction of this Court under Article 226 of the Constitution for the issuance of a writ of *mandamus*, to consider retrospectively his name for promotion to the post of Deputy Registrar with effect from 7th July, 1992. The grievance is based on the fact that even though he was the only eligible Assistant Registrar possessing three years' experience as such, yet his name was left out of consideration by the Registrar of the High Court while recommending the case for filling the vacancy of Deputy Registrar, to the Hon'ble Chief Justice. On that basis, the petitioner contends, that had his name been even mentioned by the then Registrar while forwarding the names of other Assistant Registrars for promotion as Deputy Registrar, the Hon'ble Chief Justice would have certainly considered his candidature for promotion as Deputy Registrar and, therefore, non-consideration of his candidature has resulted in violation of Article 16 of the Constitution of India.

(2) In response to the notice of motion, separate written statements have been filed by the Additional Registrar (Administration) on behalf of the High Court, Mr. M. M. Katyal, Assistant Registrar respondent No. 2, who was directed to work as Deputy Registrar in addition to his post as Assistant Registrar in his own pay and grade, by order dated 7th July, 1992, and Mr. Malkit Singh, Assistant Registrar, respondent No. 3. Though the factual position is broadly admitted, yet the petitioner is sought to be non-suited on the ground, that three years' experience of working as Assistant Registrar also included the period during which he had been promoted as Deputy Registrar in the High Court, as the promotion had been made without justification of the work load. The writ petition was admitted to D.B. on April 21, 1993.

(3) We have heard the parties at length and have gone through the record. In nutshell, the position is, that the petitioner joined as Clerk on 10th December, 1960, and was promoted as Assistant with effect from 8th May, 1970. He was further promoted as Superintendent Grade II with effect from 6th January, 1986, and as Superintendent Grade I on 1st July 1988. He was selected for appointment as Assistant Registrar on 23rd November, 1988, and he worked as such upto 4th October, 1989. On that date, he was selected for appointment as Deputy Registrar but was reverted on abolition of the post on 18th November, 1989. Thereafter, on the availability of the vacancy of Assistant Registrar, he was again promoted as Assistant Registrar on 7th June, 1990, and has been continuing as such till date. Thus, his experience of working as Assistant Registrar/Deputy Registrar exceeds three years.

(4) Rule 8 (ii) (b) of the High Court establishment (Appointment and condition of Service) Rules, 1973, provides the method for promotion and eligibility of the persons to be considered for the post of Deputy Registrar, as under :—

“The other post of Deputy Registrar shall be filled up by selection from amongst the Assistant Registrars, who are Graduates and have experience of working as such for a minimum period of 3 years.”

Since the petitioner was a Law Graduate and possessed experience of working as Assistant Registrar for a minimum period of three years, with consistent good record of service, he was eligible and qualified for being considered for promotion as Deputy Registrar.

(5) A perusal of the records shows, that on 21st May, 1992, Mr. Balbir Singh, the then Joint Registrar (Rules), submitted a proposal to the Registrar of the High Court regarding promotions to one post of Deputy Registrar, one post of Assistant Registrar and two

posts of Superintendents. Regarding filling of the post of Deputy Registrar, it was *inter alia* stated by him as under :—

“The following Assistant Registrars might be considered for promotion against the posts of Deputy Registrar :—

Sr. No.	Name and qualification	Date of appointment as Assistant Registrar	Remarks
1.	Sh. M.M. Kataria, (B.A., LL.B.)	16-1-1990	
2.	Sh. A.L. Dham	27-10-1987 (as <i>ad hoc</i> basis) 1-5-90 (on regular basis)	He was promoted as Assistant Registrar (Library) w.e.f. 27-10-1987 subject to the condition that he will not be deemed to have become senior to those officers, who were otherwise senior to him and he would not have any preferential claim for further promotion on account of his such appointment/promotion.
3.	Sh. M.D. Sharma (B.A.)	1-5-1990	His promotion was also subject to the rider as above.
4.	Sh. Malkiat Singh (B.A., LL.B.)	1-6-1990	
5.	Sh. Parma Nand (B.A., LL.B.)	7-6-1990	He remained promoted as Assistant Registrar from 24-12-1988 to 4-10-1989 and as Deputy Registrar from 5-10-1989 to 18-11-1989, when he was reverted to the post of Superintendent.

“13. Shri Parma Nand Sharma.

He was promoted on 7th June, 1990. Earlier to that, he remained promoted as Assistant Registrar from 24th November, 1988 to 4th October, 1989 and as Deputy Registrar from 5th October, 1989 to 18th November,

1989, from which date, he was reverted as Superintendent Grade-I, as it was found that promotion had been made without justification of work-load. Thus, his combined experience is more than that of Shri M. M. Katyal and Shri Malkit Singh, but he is junior to them. His C.Rs. for 1990 and 1991 are A (Very Good)."

On that basis, it was proposed by the Joint Registrar (Rules), that—

"19. To conclude—

- (a) One of the Assistant Registrars, namely, Sarvshri M. M. Katyal, A. L. Dham, M. D. Sharma, Malkit as Deputy Registrar with effect from 1st May, 1992 against the vacancy resulting from the retirement of Shri R. N. Sharma, in relaxation of the experience clause to the extent necessary.

Sd/- Balbir Singh.
Joint Registrar (Rules).
21st May, 1992.

(6) However, it is quite surprising that ever though the name of the petitioner was duly included by the Joint Registrar (Rules) amongst the five names of the Assistant Registrars, while forwarding the case to the Registrar for considering them for promotion as Deputy Registrar, yet the then Registrar, Mr. Surinder Sarup, conveniently omitted the name of the petitioner, from the list of Assistant Registrars to be considered for promotion as Deputy Registrar. Once the statutory rule provided, that the post of Deputy Registrar was to be filled "by selection from amongst the Assistant Registrars who are graduate and have experience of working as such for a minimum period of three years", it was the duty of the Registrar to consider all those Assistant Registrars who fulfilled the requisite qualifications. Incidentally, according to the examination of the case by Mr. Balbir Singh, the then Joint Registrar (Rules), the petitioner was the only Assistant Registrar who possessed the minimum experience of three years as Assistant Registrar. Had the Registrar considered the name of the petitioner also along with the other Assistant Registrars, the petitioner is right in his belief that there was a fair chance of the Hon'ble Chief Justice approving his name for promotion as Deputy Registrar, as he was a Law Graduate having three years' experience as Assistant Registrar and his record of service being 'A'—(Very Good). But it is astonishing that even

in the face of the statutory rule, the Registrar just thought it appropriate to omit the name of the petitioner and recommended to the Hon'ble Chief Justice that "the senior-most Assistant Registrar may be promoted as Deputy Registrar with effect from 1st May, 1992 in relaxation of the rules *qua* experience, which falls short of by 8 months only". It was this incorrect projection of the case by the learned Registrar, that led to the passing of the following order by the Hon'ble Chief Justice on 6th July, 1992 :—

"In the circumstances, there is no other alternative than to take up the case of Assistant Registrar for promotion as Deputy Registrar for consideration only after the officer concerned has fulfilled the conditions prescribed in the Rules, namely experience of three years in the cadre of a Assistant Registrar.

As none of the three Assistant Registrars has fulfilled the said qualifications, the only course open is to make an independent charge arrangement in the cadre of Deputy Registrar by posting the senior-most Assistant Registrar and to take up the case of promotion after he acquires the experience of three years."

(7) From the above processing and examination of the case at the level of the Registrar, it is evident that the name of the petitioner could not be considered for the post of Deputy Registrar at all, even though it was the statutory requirement of the rule that selection had to be made from amongst the Assistant Registrars, that is, all the Assistant Registrars. If there was any doubt in the mind of the Registrar with regard to the eligibility of the petitioner, it would regard to the eligibility of the petitioner, it would have been fair and just on his part to have considered his candidature along with other Assistant Registrars and to bring his own view point on the record, as had been precisely done by the Joint Registrar (Rules)—Mr. Balbir Singh. That would have complied with the requirements of Article 16 of the Constitution of India, and had also given an occasion to the Hon'ble Chief Justice to consider the name of the petitioner also, along with his other colleagues. Even if we assume that the Registrar did not consider the name of the petitioner because in his mind there might be some doubt with regard to the justification of the work-load at the time of his promotion as Assistant Registrar or Deputy Registrar, the fact still remains that the petitioner having actually held the posts of Assistant

Registrar and Deputy Registrar and worked against them, could not be ignored for consideration. Assuming further for the sake of argument, that like other Assistant Registrars, the petitioner too did not fulfil the experience, even then it was the duty of the Registrar to include his name also for the purpose of consideration amongst the other Assistant Registrars, as they too were also ineligible or unqualified like the petitioner. Viewing it from any angle, the incorrect approach to the case, its faulty processing and the wrong conclusion arrived at by the then Registrar, were wholly contrary to the facts available on the record, and left much to be desired of a senior judicial officer holding such a responsible post.

(8) Resultantly, we allow this petition and direct the Registrar of the High Court to place the case before the Hon'ble Chief Justice for considering the name of the petitioner, along with other Assistant Registrars, for promotion to the post of Deputy Registrar retrospectively with effect from 6th/7th July, 1992—the date when the Hon'ble Chief Justice passed the earlier order in pursuance whereof the office order dated 7th July, 1992 (Annexure P.1), was issued. In the peculiar circumstances of the case, there shall be no order as to costs.

J.S.T.

Before : Hon'ble J. S. Sekhon, G. S. Chahal & N. K. Kapoor, JJ.

THE STATE OF PUNJAB,—*Appellant.*

versus

KULWANT SINGH,—*Respondent.*

Criminal Appeal No. 298-DBA of 1991

December 17, 1993.

Narcotic Drugs and Psychotropic Substances Act, 1985—Chapter V—Sections 41, 42, 52, 55 & 57—Whether the provisions of Chapter V of the Act are mandatory—Non compliance or violation of said provisions—Whether trial vitiated—Provisions of section 50—Rights under section 50 whether procedural—Non compliance of the provisions of section 50—Effect of such non compliance.

Held. that the procedural safeguards provided under the provisions of sections 41, 42, 52, 55 and 57 of the Act, referred to above