

No. 13/1/78-2-GS II

From

The Chief Secretary, to Government, Haryana.

To

1. All Heads of Departments, Commissioners, Hissar & Ambala Divisions and All Deputy Commissioners and S.D.Os.(Civil) in Haryana, and
2. The Registrar, Punjab and Haryana High Court and All District and Sessions Judges in Haryana.

Dated Chandigarh, the 1st June, 1983.

Subject : Assistant Grade Examination—Instructions regarding-held ultra vires-action required to be taken in consequence thereof in regard to promotions, seniority, confirmation etc.

Sir,

I am directed to invite your attention to the composite Punjab Government instructions noted in the margin-*vide* which a qualifying test, namely, Assistant Grade Examination, *inter alia*, for purposes of promotion from Clerk to Assistant was required to be introduced in all the Departments and a broad pattern (subject to suitable modifications by the Departments) for regulating appointments to the cadre of Assistants in vogue in the composite Punjab Civil Secretariat was required to be followed. This condition of passing Assistant Grade Examination for being eligible for promotion to the rank of Assistant has been a subject of litigation which has ultimately come to close with the judgement of the Supreme Court in the case of State of Haryana, etc. versus Shamsher Jung Bahadur, as reported in 1972 S.L.R. 441—444. For facility of reference the following extracts from the relevant Judgement are quoted :—

(1) No. 4809-GII-57/21176, dated 23rd October, 1957.)

(2.) No. 4119-GII-58/71202, dated 5th September, 1958.)

Extract from the Judgement of Sub-Judge 1st Class, Sangrur, in the case of Harnam Singh, son of Shri Ram Narain Singh of Barnala versus the State of Punjab.

“I see force in this argument, according to the provisions of Article 309 of the Constitution of India, it is only the Governor of State or the persons to whom he delegates the authority, who can make rules regulating the recruitment and the conditions of Service of the persons appointed to services and posts in connection with the affairs of that State. In the present case, there is nothing on the record to show that the Governor had delegated this authority of his to the Chief Secretary in the composite Punjab Government or to the Commissioner of this Division for issuing the said instructions. Therefore, the Chief Secretary to the Government of this State could not direct the Commissioner of this Division to make rules or issue the said instructions for filling the vacancies in the cadre of Assistants in the offices of the Deputy Commissioners of this Division.”

(The High Court dismissed the appeal of the State of Punjab against the above judgement on 18th September, 1964.)

Extract from the judgement 1972 S.L.R. 441—444 of the Supreme Court in the case referred to above :

“the first question arising for decision is whether the Government was competent to add by means of administrative instructions to the qualifications prescribed under the rules framed under Article 309. The High Court and Courts below have come to the conclusion that the Government was incompetent to do so.

and Steno-typists) Rules, 1961, approval of the Government of India was considered necessary to be obtained in cases where it involved departure to the this advantage from a specific condition of service of an employee of the erstwhile State of Punjab and Pepsu in terms of sub-section (7) of section 115 of the State Re-organisation Act, 1956. In other cases, the said rules will have their due operation and effect without any prejudice because they guarantee in general, an additional chance of promotion to the Stenographers and Steno-typists, as the case may be. But a promotee of this category should not supersede any person who would have been entitled to promotion on a particular date without the condition of passing the Assistant Grade Examination.

8. The action outlined above would result in the complete review of promotions made in the Light of instructions dated 23rd October, 1957 or subsequent thereto whether by direct application or otherwise.

Adjustment of Promotions

9. The following principles may be adopted in regard to adjustment of promotions :—

- (i) Those who were ignored for promotion in the Assistant Grade on the date they would have been otherwise due for promotion, on the basis of seniority-cum-merit formula, enjoined in composite Punjab Government instructions No. 9129-C-56/3964, dated the 17th September, 1956 will have to be considered and if they are found fit on the basis of the said formula on that particular date and if they fulfil the condition of experience wherever prescribed, order of promotion be issued in their case treating them to have been promoted on the said date and their pay fixed accordingly.
- (ii) Those who were promoted on the date they were due for promotion on the basis of their seniority without passing the Assistant Grade Examination but subject to the condition that they will have to pass the examination and on their failure to fulfil this condition were reverted. their reversions will have to be undone, subject of course, to their fitness on the relevant date (the date of promotion to be assigned to them on the basis of seniority) keeping in view their record of service and experience prescribed, if any. Similar treatment will have to be given to those whose promotions were made in the rank of Assistants on temporary/adhoc basis (due according to their seniority) although with no express condition of passing the Assistant Grade Examination irrespective of the fact whether they had to be reverted subsequently on the availability of persons qualified in this examination or the arrangement continued impliedly on the assumption condition that they will stand reverted as soon as candidates qualified in this examination would be available.
- (iii) While making readjustments of promotions as outlined at items (i) and (ii) above, obviously the relevant dates of promotions will have to be calculated on the basis of the dates of promotions of officials who, regardless of their junior position in the respective seniority list were promoted on qualifying the examination, and the promotions will be adjusted according to the seniority and in the order in which vacancies become available, the junior person going down in the list of promotees to the stage till his immediate senior (in the seniority list of Clerks) is adjusted and a vacancy is available for the former's promotion.

10. The condition of qualifying the said examination having become in valid and the supersession caused by junior qualified candidates being untenable the former would revert unless by virtue of their own seniority, they become entitled to promotion against available vacancies as Assistants in the meantime.

Protection of emoluments

11. Emoluments of those persons who have to revert in the above eventuality either as Clerk or of those who become too junior to hold a higher rank of Head Assistant, Deputy Superintendent, Superintendent etc., as the case may be, will stand protected, if such emoluments are drawn in any of the following cases :—

- “(i) promotions made in terms of instructions No. 4809-GII-57/21176, dated 23rd October, 1957 as in vogue till 27-10-1970 i.e. the date when the revised instructions were issued vide circular letter No. 8073-2GS-70 dated 27th October, 1970.

not competent to alter the rules framed under Article 309 by means of administrative instructions. We are unable to agree with the contention of the State that by issuing the instructions, in question, the Govt. had merely filled up a gap in the rules. These rules can be implemented without any difficulty. We see no gap in the rules."

2. During the period this matter remained under consideration of the Supreme Court, promotions to the rank of Assistant were required to be made as under, vide Haryana Govt. Circular No. 8073-2GS-70, dated 27-10-1970 :—

- (1) Services in respect of which rules contain a specific provision for the holding of a qualifying test for promotion to the post of an Assistant, tests should continue to be held and promotion and seniority should be regulated accordingly.
- (2) If the service Rules of a department do not contain any such provision for the holding of a qualifying test for promotion to the posts of Assistants and the tests are held on the basis of executive instructions, further promotion should be made without any test. The promotions should be made provisionally and it should be made clear to the promotees that their promotions are subject to condition that they will have to qualify the test when required to do so by the Govt.

3. Consequent upon the above mentioned instructions, relating to the condition of passing Assistant Grade examination having been declared ultra-vires of the Constitution by the Supreme Court, it was decided by Haryana Govt., vide para 3 of the circular letter No. 5901-4GS-II-73/23071, dated the 11th September, 1973, that the benefit should be given only to those officials who went to the Courts and got decrees in their favour and they should be given due seniority as if there was no requirement of passing the test in their cases, in pursuance of the instructions issued by the Government in the year 1958 or the service Rules which were framed without getting the prior approval of the Govt. of India as required under Section 115 of the State Reorganisation Act, 1956. Government have reconsidered the whole matter thoroughly and have now decided that the steps enumerated in the succeeding paras may be taken by all the Departments, where ever required.

Rescinding of Instructions

4. The instructions dated the 23rd October, 1957 and the 5th September, 1958, referred to above and any subsequent instructions, issued with a view to elaborating the policy with regard to promotion as Assistant including circular letter dated the 11th September, 1973 referred to above should be deemed to have been rescinded. Accordingly, the benefit is now to be given to all officials irrespective of the fact whether or not they went to the Courts and got decrees in their favour.

Vacating the Direct or Indirect effect of Instructions

5. The departments who were acting directly on the basis of the aforesaid instructions for imposing the condition of passing the Assistant Grade Examination before promotion or were indirectly relying upon these instructions, while giving effect to general provisions in their respective service rules that for promotion to the rank of Assistant, it shall be necessary to pass such Assistant Grade Examination as specified by Government, shall also vacate the effect of the instructions in question, unless the departments concerned had made specific provision in the form of Rules under Article 309 of the Constitution for holding such an examination.

Independent condition of Assistant Grade Examination not valid without the order of the competent Authority.

6. In services in respect of which no rules have been framed so far and in respect of which no order of the competent authority providing for holding of Assistant Grade Examination in the manner specified in Article 309 or 320 of the Constitution of India or independent terms and conditions relating to certain posts have been issued, the condition of Assistant Grade Examination imposed so far shall also not be valid.

Partial review of Promotion Regulated under Punjab Civil Services (Promotion of Steno-Graphers and Steno-typists) Rules, 1961.

7. In regard to promotions of Steno-typists to the posts of Head Assistant and of

dated 27-10-1970 referred to above) till 19th April, 1972 i.e. the date on which the Supreme Court judgement was announced.

As a net result of the above, the emoluments drawn up to 19th April, 1972 will stand protected."

Seniority

12. Adjustment of promotions on the above lines will obviously necessitate recasting of the Seniority lists. Action may be taken as follows :—

- (i) Seniority of the officials in the cadre of Assistants, Head Assistant, Deputy Superintendent, Superintendents, etc., as the case may be, should be recast by restoring the *inter se* seniority as in the cadre of clerks subject of course to their suitability for the higher rank as explained in paragraph 9(i) above. This may be done without taking into consideration the effect of the instructions regarding Assistant Grade Examination now struck down by the High/Supreme Court. The protection in respect of emoluments in terms of para 11 above, if given will not, however, be of any advantage in the seniority, whatsoever.
- (ii) The *inter se* seniority of Steno-graphers and Steno-typists who were promoted to other ranks vis-a-vis promotee from clerical line, will continue to be such as in the ranks from which they were promoted because their promotions to senior ranks have not been struck down by the Court.
- (iii) The persons who were recruited as Assistants either by transfer or direct appointment, in accordance with the provisions of various service Rules, will not be affected in any manner in their seniority vis-a-vis promotees, which should normally as determined with reference to the date of continuous officiation. No supersession in their case should take place merely by recasting the seniority list. Thus the seniority list shall be recast firstly keeping in view the formula of one for one and secondly by bringing down to correct places the persons who were promoted by getting a jump in the seniority simply by passing the Assistant Grade Examination.
- (iv) The revised provisional lists in the promoted cadre(s) should be circulated by the Departments among the employees concerned and they should invite objections within a period of two months.
- (v) The Departments while inviting objections on the provisional seniority lists, should make it clear that the seniority lists, would be further subject to approval by the Government of India according to the States Reorganisation Act, wherever applicable, e.g. where the recasting of the seniority involves changes in those seniority lists which were framed in consultation with the Government of India in terms of the States Reorganisation Act, 1956. The reference to Government of India in this behalf should be made in a lucid manner giving complete background of the matter especially the Supreme Court judgement.
- (vi) The operation of the revised provisional seniority list should, however, be commenced immediately and should not be deferred till the approval of the Government of India.

Confirmation

13. Confirmations too will have to be regulated in order of seniority as recast above, firstly keeping in view the provision existing in most of the service Rules for determining seniority on the basis of the dates of confirmation and secondly because this is a major service benefit which should have accrued according to seniority. Of course, the successful performance of duties during the period of probation or officiation, as the case may be, according to the nature of post will be necessary. Consequently, those who become junior in the promoted rank shall have to be deconfirmed after giving them an opportunity if no substantive vacancy is available to shift their lien, or in the alternative additional supernumerary posts will have to be created. Readjustment of confirmations and the need for additional posts should be assessed according to the position in each Department.

Subsequent Promotions to Higher Ranks

subject, of course, to any rules inter alia, those which might be framed for the purpose separately. Those promoted so far on the basis of the seniority framed as a result of passing Assistant Grade Examination, shall vacate places in the higher ranks for the senior persons to step-in and adjusted according to their turn only if vacancies are available.

Benefits to Retired Persons

15. Those who have already been retired from service without having been promoted or promoted later than the date they were entitled to be considered for promotion according to their seniority as clerks without passing the Assistant Grade Examination, would also be entitled to benefit of promotion according to the above instructions. Their cases should be reviewed and benefit of promotion and consequently raising of emoluments should form the basis of amount of pension/death-cum-retirement gratuity to be afforded to them. There would be no effect of these instructions on those who have already been retired after having been promoted on the basis of Assistant Grade Examination because of the legal implication involved in the reduction of their pension etc.

Illustration

16. In order to facilitate the examination of cases by different departments, an elaboration of Government's policy as explained in the preceding paragraphs is given in the form of an illustration in Annexure 'A'.

Scope of these Instructions Vis-a-Vis Previous Cases

17. As is clear from the background in which these instructions are being issued, their scope is directly related to the cases of promotion, seniority, confirmation etc., arising out of Government's general instructions issued,—vide Circular letter dated 23rd October, 1957, and subsequent thereto,—vide which the Assistant Grade Examination was required to be prescribed in all the Departments of the State. Accordingly these revised instructions would amount to vacating the condition of Assistant Grade Examination as if the instructions dated 23rd October, 1957 were not there and as such seniority in the clerical cadre alone would form the basis for the promotion, seniority and confirmations, except in cases regulated by the rules validly framed as explained in para 5.

18. The Assistant Grade Examination/Test held in certain departments prior to the issue of the aforesaid policy instructions dated 23rd October, 1957, are of course, not directly hit by the Rulings in question. It is a different matter, if the judgements kept in view while issuing these instructions may have indirect bearing up to the practice adopted by the Department prior to 23rd October, 1957. The Administrative Departments concerned are in a better position to appreciate such cases and to make a realistic assessment about the legality of the practices adopted by way of framing any rules or by issuing any instructions/an order of an executive nature. This assessment be made in the context of the principles enunciated in the judgement referred to in paragraph 1 of this letter. The Departments may, therefore, decide such cases in consultation with Legal Remembrancer after taking into consideration the above principles as also the effect of the orders having been challenged or otherwise. Since, this may entail revisions of the seniority lists as notified under Sections 115 of the States Reorganisation Act, 1956, the departments should also take the approval of the Government of India, wherever necessary.

Saving

19. These instructions have been issued subject to the following understanding and conditions which should be carefully noted by all concerned for strict compliance :—

- (i) that the grant of retrospective seniority and promotions to *non-petitioners is not a legal obligation of the State Government;
- (ii) that Government wish to be fair with the *non-petitioners within the administrative limitations; and at the same time do not wish to create a hardship by placing the junior petitioners above these non-petitioners as well as suppressing the latter by those who were promoted earlier on passing the Assistant Grade Examination;
- (iii) that Government have decided to give seniority on presumptive basis according to criteria of seniority-cum-merit and by ignoring the condition of Assistant Grade Examination in cases in which this condition was imposed without framing rules

(iv) that Government would give the above seniority to *non-petitioners without any liability of the payment of arrears of salary; and

(v) that Government would give the above mentioned benefits only on the undertaking to be given by each employee concerned as per Annexure 'B'.

*Those who have not obtained any decree/judgement from the Court in their favour.

Gist of Instructions

20. Within limitations explained above and on the requisite undertaking in Annexure 'B', the net effect of these instructions would be to give the benefit of seniority to all Assistants including those who have since retired from service, without giving the arrears of pay.

However the arrears of pay already allowed to those who had gone in writ or obtained a decree from the court in terms of the decree or judgement, as the case may be, will not be recovered.

21. For facility of uniformity of action and liaison, the General Services Department may please be kept informed of the action taken in this direction.

22. In view of the importance/urgency of the matter, necessary action as outlined above may please be taken on priority basis.

Receipt of this letter may please be acknowledged.

Yours faithfully,

Sd/-

(KULWANT SINGH)
Joint Secretary General Administration,
for Chief Secretary to Government, Haryana.

A copy is forwarded to the Financial Commissioner and Administrative Secretaries to Government, Revenue, Haryana, for information and similar necessary action.

Sd/-

(V.M. CHADHA)

Superintendent General Services-II
for Chief Secretary to Government, Haryana.

The Financial Commissioner, Haryana and the Administrative Secretaries to Govt., Haryana.

O.O. No. 13/1/78-2 GS II, dated Chandigarh, the 1st June, 1983.

ANNEXURE 'A'

A, B, C, E, F, H and I were working as Clerks in the same order of seniority prior to the issue of Government Instructions dated 23rd October, 1957. B and E qualified the Assistants Grade Examination and were promoted as Assistants on 12th September, 1958 and 15th October, 1958 respectively on the availability of vacancies. A, C, F, H and I were not promoted as they could not pass the said examination. F and I qualified the examination on subsequent occasions and were promoted as Assistants on 3rd December, 1960 and 10th January, 1962 respectively. D and G were taken as Assistants by transfer and direct appointment on 4th November 1958 and 15th April, 1962 respectively. A and C have not been able to qualify the examination upto now, but have been promoted as Assistants on adhoc basis. H, who also could not pass the Assistant Grade Examination, is still working as Clerk. Their present seniority stands as under :—

Sr. No.	Name of official	Date of promotion	Remarks
Assistants			
1.	Mr. 'B'	12.9.1958	Promotee
2.	Mr. 'E'	15.10.1958	Promotee
3.	Mr. 'D'	4.11.1958	On transfer
4.	Mr. 'F'	3.12.1960	Promotee
5.	Mr. 'I'	10.1.1962	Promotee
6.	Mr. 'G'	15.4.1962	Direct
7.	Mr. 'A'	10.12.1963	Adhoc
8.	Mr. 'C'	8.1.1964	Adhoc
Clerk			
1.	Mr. 'H'		

Now the seniority list of Assistants is to be revised. 'A' being the senior most clerk will have to be placed at Serial No. 1 and considered to have been promoted with effect from 12th September, 1958. 'B' will thus come down to Sr. No. 2 and take the place of 'E' on the basis of his own seniority and considered to have been promoted with effect from 15th October, 1958. 'D' is a transferee and as such will not be affected. He will remain at Serial No. 3. 'C' being the next senior most Clerk is to be placed at Sr. No. 4 but his record prior to 3rd December, 1960 (the Date on which next vacancy became available) being not satisfactory having been ignored, his place will be taken by 'E' who is found fit and will be considered to have been promoted with effect from 3rd December, 1960. 'F' who now vacates the post at Sr. No. 4 will be placed at Sr. No. 5 and considered to have been promoted with effect from 10th January, 1962 provided 'C' is again considered unfit on seniority-cum-merit basis and 'F' is considered fit for promotion prior to 'C'. 'G' being a direct recruit will maintain his position at Sr. No. 6. 'C' who was ignored for promotion earlier, is now for promotion for the vacancy became available on 10th December, 1963 and will thus be placed at Sr. No. 7.

'H' who is still working as Clerk will get promotion on the basis of his seniority as clerk and will be placed at Serial No. 8. Since there are in all 8 posts, I, who was at Sr. No. 5 will have to be reverted as Clerk. The revised seniority list would, therefore, be as under :—

Sr. No.	Name of the official	Date of promotion
1.	Mr. 'A'	12.9.1958
2.	Mr. 'B'	15.10.1958
3.	Mr. 'D'	1.11.1958
4.	Mr. 'E'	3.12.1960
5.	Mr. 'F'	10.1.1962
6.	Mr. 'G'	15.4.1962
7.	Mr. 'C'	10.12.1963
8.	Mr. 'H'	8.1.1964
Clerk		
1.	Mr. 'I'	(Subject to protection of emoluments as in para 12 of these instructions).

ANNEXURE 'B'

I _____, son of _____
at present employed as _____ in the department of _____
_____ under the Government of the State of Haryana
do hereby undertake that in case I am promoted to the post of Assistant with retrospective
effect in terms of Haryana Government Instructions No. 13/1/78-2-GSII, dated 1-6-1983. I will
not claim any arrears of pay becoming payable on account of such retrospective promotion.
I also agree that the said date of promotion as an Assistant may be treated only presumptive
for the purposes of grant of benefits of seniority and I do hereby voluntarily forego all rights
as aforesaid.

I hereby further declare that I have given this undertaking of my own free will without
any extraneous influence.

Dated :

Signature _____

Designation _____

Full address _____

