

**WPSS No.1597 of 2014**

**Hon'ble Rajiv Sharma, J.**

Mr. Sandeep Kothari, Advocate for the petitioner.

Mr. B.S. Parihar, Standing Counsel for the State.

Mr. Bhagwat Mehra, Advocate for the respondent Nos.2 & 3.

The petitioner was appointed as a Clerk and subsequently, he was promoted to the post of Sadar Munsarim in the pay scale of Rs.5500-9000 on 30.07.2013. The respondents have framed the Rules under Article 309 of the Constitution of India vide notification dated 24.04.2007 called as the Uttarakhand Subordinate Civil Courts Ministerial Establishment Rules, 2007. Rule 3 defines the Cadre of the service by reflecting the posts included therein. The post of Copiest/Junior Clerk/ Assistant Accounts Clerk, Assistant Librarian, Stationary Clerk, Amin Grade II, Assistant Record Keeper, Assistant Nazir are shown in the pay scale of Rs.3050-4590 prescribing the mode of recruitment as per 3(a). Similarly the posts of Suits Clerk/ Execution Clerks, Ahalmads, Dy. Nazir, Accounts Clerk, Sessions Clerk, Appeals Clerk, Cashier, Misc. Clerk, Munsarim/Readers of Civil Judge (SD) and Civil Judge (JD)/J.M., Librarian, Amin Grade I/Deputy Record Keeper are shown as per Rule 3(b) in the pay scale of Rs.4000-6000 to be filled up from amongst the category (a) having three years experience. The posts of Munsarim/Readers of the Courts in the pay scale of Rs. 4500-7000 as per Rule 3(c) are to be filled up from amongst the category (b) having three years experience. The post of Sadar Munsarim shown in the pay scale of Rs.5500-9000 as per Rule 3(d) is to be filled up by way of promotion or selection from amongst the category (c) who has put atleast ten years service in all.

The present dispute with regard to filling up the post of Senior Administrative Officer is defined under Rule 3 (e) in the pay scale of Rs.6500-10,500/-. The post of Senior Administrative Officer is to be filled up by way of promotion or selection from amongst the categories (c) and (d) who has put atleast ten years service. It is not dispute that the petitioner had worked for more than 10 years as Sadar Munsarim and was eligible to be promoted to the post of Senior Administrative Officer. The respondents have held the written examination to adjudge the suitability of the petitioner and similar situate persons as per Rule 20(5). The post of Personal Assistant does not fall in the feeder category as per Rule 3. How this post has been incorporated in Rule 20(5), has not been explained. According to Rule 3 (e), the post of Senior Administrative Officer can be filled up by promotion or selection from amongst the categories (c) and (d) who has put atleast ten years service. It is reiterated that the post of Personal Assistant is not mentioned therein.

The fact of the matter is that the post of Personal Assistant is not in the feeder category as per Rule 3, but added in Rule 20(5). The respondent No.4 has been selected to the post of Senior Administrative Officer though he was working and discharging his duties of Personal Assistant. The person who was not in zone of consideration as per Rule 3 has been considered and selected and promoted to the post of Senior Administrative Officer by overlooking the claim of the petitioner who was in feeder category as per Rule 3(e). The petitioner has no right to be considered for promotion but he has a right to be considered for promotion in accordance with law. The selection of respondent No.4 is against the Rules noticed hereinabove and is liable to be quashed and set aside.

Their Lordships of Hon'ble Supreme Court in **(1997) 9 SCC 527** in the case of **Raj Kumar and others Vs. Shakti Raj and others** have held that where the procedure of selection and the exercise of the power to exclude the posts from the purview of the SSSB suffered from glaring illegalities, the candidate appearing for selection and remaining unsuccessful, are, not barred from questioning the selection. Their Lordships have further held that the acquiescence/estoppel would not applicable in such a case. Their lordships have also held as under:-

*"16. Yet another circumstance is that the Government had not taken out the post from the purview of the Board, but after the examinations were conducted under the 1955 Rule and after the results were announced, it exercised the power under the proviso to para 6 of 1970 notification and the post were taken out from the purview thereof. thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal vs. State of & K [(1995) 3 SCC 486] and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the selection Board or the method of Selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under 1955 Rules, So also in the method of selection and exercise of the power in taking out from the purview of the and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case, thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action take by the Government are not correct in law."*

Accordingly, the writ petition is allowed. Impugned order is quashed and set aside. The promotion of respondent No.4 to the post of Senior Administrative Officer is quashed and set aside. The respondent No.3 is directed to

take steps for filling up the post of Senior Administrative Officer within a period of eight weeks from today and to complete the procedure within a period of three months thereafter by considering all the eligible candidates.

Since the petitioner was overlooked, his case shall be considered for promotion if he is found suitable, be promoted on notional basis.

Pending application, if any, stands disposed of accordingly.

**(Rajiv Sharma, J.)**  
**31.05.2018**

JKJ