



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/1544/2017

Date of decision: 04.11.2020

(Reserved on: 09.10.2020)

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A).**

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1. Arti Sharma daughter of Sh. Baldev Dass Sharma, aged 33 years, resident of House No.100/D, G&J (U), Green Apartment, Pitampura, New Delhi. Group C.
2. Poonam daughter of Sh. Rajender Prasad, aged 32 years, resident of House No.643, Sector-25, Panchkula. Group C.

...APPLICANTS

BY: SH. PUNEET GUPTA, COUNSEL FOR THE APPLICANTS.

VERSUS

1. Chandigarh Administration through the Secretary, Department of Medical Education and Research, Civil Secretariat, Deluxe Building, Sector-9, Chandigarh.
2. Government Rehabilitation Institute for Intellectual Disabilities, Sector-31, Chandigarh through its Director.
3. The Joint Director, Government Rehabilitation Institute for Intellectual Disabilities, Sector-31, Chandigarh.
4. Vikas S/o Sh. Ram Kishan, aged 26 years, R/o Village Chot, P.O. Padla, Distt. Kaithal, Haryana.
5. Priyanaka Kumari D/o Sh. Puran Chand, R/o House No.1327/E, Adarsh Nagar, Naya Gaon, Distt. Mohali.

...RESPONDENTS

BY: SH. RAJESH PUNJ, COUNSEL FOR RESPONDENTS NO.1 TO 3.

SH. D.R. SHARMA, COUNSEL FOR RESPONDENTS NO.4 AND 5.



ORDER

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicants have approached this Tribunal by filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of letter dated 20.12.2017 (Annexure A-12) and letter dated 20.12.2017 (Annexure A-13), whereby respondents have rejected their claim for the post of Vocational Instructor, without considering the submissions made in the objections dated 15.11.2017 and have declared them ineligible being overage. They have also sought quashing of Public Notice dated 13.11.2017 (Annexure A-6), whereby applicants have been shown ineligible being overage. Applicants have further sought issuance of direction to the respondents to consider their case for appointment to the post of Vocational Instructor and appoint them as such being fully eligible, as per merit list prepared by the respondents and grant them all consequential benefits.
2. Facts which led to filing of the O.A. are that the respondents issued an advertisement for filling up 8 posts of Vocational Instructors out of which 05 were reserved for General Category, 02 for OBC and 1 for Scheduled Caste. The last date of receipt of online applications was 15.11.2016. The qualification required for the post was



that a candidate should possess the 10+2 or its equivalent with at least 50% marks in aggregate from a recognized board/Institution and Diploma in Vocational rehabilitation-Mental Retardation (DVR-MRI)/Diploma in Vocational Training and Employment-Mental Retardation with 6 months certificate course in Education of children with Special Needs/Two years D.Ed. Special Education in Mental Retardation/One year Diploma in Special Education (DSE-MR) with at least 50% marks or any other equivalent qualification approved by RCI in the field of Mental Retardation. Recruitment criteria consisted of two parts i.e. Part-1 written test of 90 marks whereas Part-II consists of 4 marks of higher education qualification, 2 marks of work experience and 2 marks for computer knowledge. There was no personal interview for the post in question and the counseling was to be held for verification of documents of the shortlisted candidates. Both the applicants who belong to general category and being fully eligible as per qualifications prescribed in the advertisement, applied for the post on 15.11.2016 and 12.11.2016 respectively. They appeared in the written test held on 11.08.2017. The result of the written test was declared on 23.08.2017 wherein names of the applicants were shown at serial no.4 and 5 as per merit list prepared



on the basis of marks scored in the written test. The list of candidates who qualified written test was uploaded online on 06.9.2017. They were required to submit the hard copy of the application and certificates/testimonials in the ratio of 5:1 for the verification of documents, which the applicants did in time.

3. A public notice was issued on 13.11.2017 whereby the list of eligible/ineligible candidates was displayed, in which both the applicants were declared as not eligible being overage. 10 days time was given to submit objection with regard to their eligibility from the date of issuance of notice. Both the applicants submitted their objections stating therein that they were eligible in terms of advertisement. It has also been pointed therein that as per rules applicable to the post of Vocational Instructor which is a Group 'C' post, the age limit provided is between 18 to 30, which is relaxable as per instructions/orders issued from time to time and as per 'Note' appended in the Rules, the crucial date for determining the age limit shall be the closing date for receipt of applications from candidates. It has further been submitted that Department of Personnel, Chandigarh Administration issued letter dated 04.11.2016, relaxing the



upper age limit for the first entry into Government service in direct recruitment for all Technical and Non-Technical Posts in Chandigarh Administration by enhancing upper age limit from 25 to 37 years on the Punjab Pattern. A reminder was also submitted by applicant no.1 on 17.11.2017 to decide their claim in the light of letter dated 04.11.2016. When respondents did not pay heed, applicants moved before this Tribunal by filing O.A. No.60/1475/2017, which was disposed of vide order dated 18.12.2017 directing the respondents to keep two posts reserved till they decide claim of the applicants by passing a reasoned and speaking order and the restrain order will continue to operate for another ten days, if decision to be taken goes against the applicants. The claim of the applicants was rejected by the respondents vide orders dated 20.12.2017 (Annexure A-12 and A-13), against which they are before this Court.

4. The applicants have taken various grounds for invalidation of impugned orders firstly that advertisement itself is defective as in terms of Government Rehabilitation Institute for Intellectual Disabilities (Group-C)(Non-Ministerial) Post Recruitment Rules, 2016, crucial date for determining the age limit is closing date of receipt of applications from candidates whereas in advertisement



they have fixed cutoff date as the date of advertisement. Thus, it is pleaded that the impugned advertisement itself be quashed and consequently the selection also, being contrary to Rules. It has further been stated therein that the impugned list declaring applicants as ineligible on the ground of overage is also liable to be set aside as respondents have not considered letter dated 04.11.2016, whereby they themselves have enhanced the upper age limit from 25 to 37 on Punjab pattern for the first entry into Government service in direct recruitment for all Technical and Non-Technical Posts in Chandigarh Administration. Since applicants are less than 37 years of age, therefore, impugned letter be quashed and respondents be directed to offer them appointment as per their merit.

5. Respondents have filed written statement wherein they did not dispute the factual accuracy. However, they have submitted that the applicants were over age on cutoff date i.e. 1.1.2016 as they had crossed 30 years. With regard to applicability of letter dated 4.11.2016 enhancing the upper age limit from 25 years to 37 on Punjab pattern, they have explained that it was specifically mentioned therein that necessary amendment in service/RRs with approval of competent authority may be carried out. Thus, RRs were



required to be amended so that future recruitments are carried out accordingly. In the said notification, it was nowhere mentioned that existing/ongoing recruitment process is to be stopped or revised. After the issuance of the notification, the competent authority again considered the issue and it has been held that the existing recruitment process i.e. where the posts have been advertised need not be disturbed and the process of modification of all the recruitment rules be initiated, for further recruitment.

6. Private respondents have not filed their separate reply but have adopted reply of official respondents.
7. We have heard learned counsel for the parties.
8. Sh. Puneet Gupta, learned counsel for the applicants vehemently argued that the impugned orders declaring applicants ineligible being over age are liable to be set aside. To substantiate his plea, he argued that cutoff date for calculating age mentioned in the advertisement is 1.1.2016 and as on that date a candidate should be below the age of 30 years, which is contrary to 2016 Rules, which stipulates that age is to be seen on the last of submission of application form which in the present case is 15.11.2016 i.e. the date of submission of online application. Thus, he pleaded that action of the



respondents is illegal, arbitrary and liable to be set aside. He further argued that respondents have also not considered letter issued by Department of Personnel, Chandigarh Administration dated 04.11.2016, wherein it has been decided to increase upper age limit from 25 to 37 years. He submitted that once this decision had been taken by Chandigarh Administration before the cutoff date which in the present case is 15.11.2016, therefore, also impugned orders be quashed and set aside as applicants are within age limit as per letter dated 04.11.2016.

9. Respondents have reiterated what has been submitted in the written statement. However, they have submitted that this issue has already been considered by this Court in the case of **Simplejit Kaur vs. Government Medical College, Chandigarh** (O.A. No.60/00075/2017) decided on 15.11.2017, where this Court has considered the notification dated 04.11.2016 enhancing the age limit from 30 to 37 years and has negated the view that these instructions will be applicable retrospectively.
10. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record.
11. A Conjunctive perusal of pleadings makes it clear that the applicants have impugned action of the respondents declaring them ineligible on account of over age as they



had crossed age of 30 years on the cutoff date i.e. 01.1.2016. Learned counsel for the applicants argued that cutoff date as stipulated in advertisement is contrary to 2016 Rules wherein it has been prescribed that cutoff date shall be last date of submission of application form which in present case is 15.11.2016, therefore, he submitted that impugned order declaring them as ineligible be set aside.

12. We are afraid that this ground is available to the applicants. Even if we accept contention raised by the applicants that cutoff date would be 15.11.2016 as per 2016 Rules even then they are overage because they had crossed 30 years as on that date as well, therefore, this will not help them. Second question which learned counsel for the applicants has raised is that respondents have not implemented letter dated 04.11.2016 issued by the Personnel Department of Chandigarh Administration whereby they have enhanced age limit from 18-25 to 18-37 years for recruitment of all Technical and Non-Technical Posts in Chandigarh Administration on Punjab Pattern is concerned. Even this argument is misconceived. For ready reference, letter dated 04.11.2016 reads as under:-

"To Chandigarh, dated the 04.11.2016

All the Administrative Secretaries/
Head of Department/Offices/
Institutions/Boards/Corporations,



Chandigarh Administration.

Subject: Regarding enhancement of upper age limit for entry into Government Service.

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Sir/Madam,

I am directed to address you on the subject noted above and to state that various Unions/ Federations of the employees of Chandigarh Administration have been demanding for enhancement of upper age limit for entry into government service on Punjab pattern. The matter has been considered by this Administration in depth to redress the long standing demand of Unions/Federation of the employees of Chandigarh Administration as well that of job seekers and to provide avenues of employment to the aspiring youths in the U.T. Chandigarh, it has been decided to enhance the age limit for first entry into government service (in direct recruitment) for all technical and non-technical posts in Chandigarh Administration from 18-25 years to 18-37 years on Punjab pattern. In other words, the upper age limit has been enhanced from 25 years to 37 years on the pattern of Punjab Government.

You are, therefore, requested to carry out the necessary amendment in the Service/Recruitment Rules with the approval of the competent authority. There is no need to refer the case /proposal to the Department of Personnel for concurrence in this regard, anymore.

Yours faithfully

Superintendent Personnel

For Secretary Personnel
Chandigarh Administration"

Above letter makes it clear that a decision has been taken by the Chandigarh Administration to enhance age limit from 18-25 to 18-37 years on Punjab Pattern but they have themselves advised that concerned service/recruitment rules be amended with the approval of Competent Authority. It is not in dispute that issue of letter dated 04.11.2016 heavily relied upon by the applicants, was never placed before Competent Authority



and 2016 Rules are still holding the field. Therefore, plea of the applicants that this letter was issued prior in time than the cutoff date and hence this will have effect, cannot be accepted. It is settled law that the executive instructions cannot override rules which are framed under Article 309. Even this Court in the case of Simplejit Kaur (supra) has considered the same notification dated 04.11.2016 and held that it will have prospective effect. Therefore also, the applicants have no case. Relevant part of the said decision reads as under:-

"Moreover, it is not a matter of dispute that the posts in question are governed and regulated by the Govt. Medical College and Hospital, Chandigarh (Group 'C' Ministerial Posts), Recruitment Rules, 2002 (Annexure R-1/1), wherein the age limit for direct recruitment is prescribed between 21 to 30 years. In pursuance of the statutory rules, the age limit was prescribed as 21 to 30 years in the advertisement (Annexure A-1). Unless and until the statutory rules are amended, so as to enhance the age-limit, the subsequent instructions dated 04.11.2016, neither would apply retrospectively nor over-ride the statutory recruitment rules (Annexure A-1/1).

13. Hence, we find no merit in this case, the O.A. is accordingly dismissed.

(AJANTA DAYALAN)
MEMBER (A)

Date: 04.11.2020.
Place: Chandigarh.

'KR'

(SANJEEV KAUSHIK)
MEMBER (J)