

27

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(ORDER RESERVED ON 07.09.2016)

...
Date of filing: 22.08.2014
O.A No. 060/00728/2014 Date of decision: 14.9.2016

...
**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

...
Dr. Ritu Pradhan Assistant Professor (Lecturer) working in Govt. Home Science College, Sector 10, Chandigarh.

...APPLICANT

BY ADVOCATE: Sh. Ravi Kant Sharma.

VERSUS

1. Secretary Education, Union Territory Secretariat, Chandigarh Administration, Sector 9, Chandigarh.
2. Director, Higher Education, Colleges, U.T. Secretariat, Chandigarh Administration, Sector 9, Chandigarh.
3. Sh. Mahboob Khan, (Lecturer) now Asstt. Professor working in Govt. Home Science College, Sector 10, Chandigarh.
4. Mrs. Chhaya Verma, (Lecturer) now Asstt. Professor working in Govt. Home Science College, Sector 10, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. A.L. Nanda, counsel for respondents no.1 & 2.
Sh. S.S. Pathania, counsel for respondent no.4.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A):-

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking directions to the respondents to fix the seniority of the applicant at serial no.21 from the date of joining i.e. 27.11.2002, in the cadre of Lecturer in Home Science College Chandigarh and the

18

28

respondents no.3 & 4 at nos.24 and 25 as per A-2 as these respondents cannot be given seniority over and above the applicant when they joined in January 2004. Further respondents no.3 & 4 cannot be given any benefit as shown in order A-3 by taking date of recommendation of the UPSC as their date of joining and particularly on the basis of the orders dated 04.11.2011 (12.11.2011) A-3. The order A-1 be set aside qua respondents no.3 & 4 shown at nos.14 & 15 in the order A-3 with a further prayer not to grant them any benefit from the date of recommendation of the UPSC, rather it should be from the date of joining as Lecturer.

2. It is stated in the OA that the applicant was selected by the UPSC in the year 2002, was issued appointment letter, and joined her duties on 27.11.2002 as Lecturer (Food & Nutrition) in the Govt. Home Science College, Chandigarh. The respondents issued a seniority list as on 01.10.2007 (Annexure A-2) in which the name of the applicant figures at no.21. The respondents no.3 & 4 joined their duties on 02.01.2004 and 19.01.2004 respectively and accordingly the names of the respondents no.3 & 4 figured at serial nos.24 & 25 respectively as they joined more than one year after the date of joining of the applicant. Objections were invited against the seniority list dated 01.10.2007 (A-2) from all the Lecturers, to be filed within 15 days from the date of publication, but respondents no.3 & 4 did not submit any objections and were satisfied about their positions shown in the list. Later, respondent no.4 filed a representation

Ms. —

28

dated 05.05.2008 claiming pension as applicable to the govt. employees who joined service before 01.01.2004. The reason given was that the names of some lecturers were recommended by the UPSC in July 2002 but appointment letters could not be issued at that time but were issued later. In view of this position they should be considered to have been appointed from 22.03.2002 & 12.07.2002 from the date of recommendation by the UPSC and their pay and other allowances be fixed accordingly though appointment letter was not issued in 2002. It is alleged that respondents no.1 & 2 accepted the requests of respondents no.3 & 4 in an illegal and wrong manner and granted them the benefits from the date of recommendation by the UPSC, for all intent and purposes. The respondents no.3 & 4 were given deemed date of appointment from the date of UPSC recommendation and their pay fixed on notional basis without payment of arrears. Further an order dated 04.11.2009 was circulated on 12.11.2009 whereby they have been granted the benefits of seniority, increments, pension, gratuity, GPF, GIS, etc. from the date of recommendation by the UPSC. The respondents have also issued an order in this regard (Annexure A-1). A copy of the order dated 04.11.2009 / 12.11.2009 issued by the respondent no.1 is attached (Annexure A-3).

3. It is further stated that prior to joining the present job as Asstt. Professor in Home Science College Mr. Mahaboob Khan was working in Govt. Medical College and Hospital, Sector 32, Chandigarh, and had drawn salary from the date of

11

recommendation to the date of joining i.e. from 22.03.2002 to 09.01.2004 from Govt. Medical College and Hospital. Similarly respondent no.4-Ms. Chhaya Verma, prior to her joining the present job as Asstt. Professor in Home Science College, was working as a Lecturer with Banasthali Vidyapeeth.

31

4. It is also stated that Rules governing the service conditions of the Chandigarh employees are the Punjab Civil Service (General and Common Conditions of Services) Rules, 1994, as notified by the Department of Personnel and Administrative Reforms, Punjab Govt. Rule 8 deals with Seniority. A copy of the Rules is attached as Annexure A-4. Keeping in view the order A-3 the respondent no.2 issued a letter dated 06.01.2011 for re-fixation of seniority of respondents no.3 and 4 to that of serial no.21 and 22 i.e. above the applicant.

5. The applicant was shocked and surprised to know about the orders passed by the respondents no.1 & 2 and lodged protests against this action but of no avail. Ultimately the applicant filed a detailed representation dated 17.01.2011 about this illegal and wrong action (Annexure A-5). Applicant also filed OA no.779/CH/2012 which was disposed of on 20.03.2013 with a direction to decide the seniority issue within 7 days and till the disposal of the seniority issue no action to the detriment of the applicant shall be made. The seniority issue has been decided by the respondents on 31.07.2014 (Annexure A-1) in an illegal and wrong manner by declaring the seniority position of respondents

M

no.3 and 4 above the applicant when they are junior to the
 applicant. Hence this OA. 3)

6. In the grounds for relief it has, interalia, been stated as follows:-

"1. While passing the order A-1, the respondents have adopted a wrong approach by relying on the judgment of Dr. Pratiksha Gupta Vs. Chandigarh Administration. This judgment is not applicable to the facts of the present case. In Dr. Pratiksha Gupta's case, six posts of Senior Lecturers (Obstetrics & Gynecology) were advertised. Against that advertisement a panel of six doctors was recommended by the UPSC but out of those six, only four doctors were issued appointment letters. The appointment letters of other two SC/OBC recommended doctors were kept in abeyance as they were not having the SC/OBC certificates issued by the Chandigarh Administration. These two doctors approached the Tribunal (CAT) for a direction to issue the appointment letter to the said two recommended candidates, which was allowed. But, in the present case only one post of Lecturer (Food & Nutrition) in the Govt. Home Science College, Chandigarh was advertised against which applicant was recommended and she was appointed and joined on 27.11.2002 as Lecturer (Food & Nutrition) in the Govt. Home Science College, Chandigarh. The post of respondents no.3 & 4 was advertised separately and both these respondents were recommended separately. The Govt. chose not to appoint them. If the Govt. has chosen not to issue appointment letters to them, then it was incumbent upon these respondents to approach the Courts for the said relief. But the Govt. issued appointment letters much later in January 2004 and respondents no.3 & 4 joined on 02.01.2004 and 19.01.2004 respectively and were shown at nos.24 & 25 respectively in A-2. Now they cannot be given seniority position over and above the applicant by taking their deemed date of joining from the date of recommendation by the UPSC when they were not in the same panel. Merely because respondents no.3 & 4 were recommended earlier, will not grant them any right to be considered from the date of recommendation for the purposes of seniority, pay and other service benefits. The right will accrue only from the date appointment letter is issued and consequent thereto they join the service. Until an appointment letter is issued no legal right is vested with them. To appoint or not is within the exclusive

M.

32

jurisdiction of the Government after recommendations of the UPSC. The Governor is not bound to act on the recommendations of the UPSC. The UPSC recommends the names of persons for appointment. If the names are recommended by the UPSC it is not obligatory on the Government to accept the recommendation. Therefore, the reasoning given by the Chandigarh Administration on the basis of the decision of Dr. Pratiksha Gupta's case is not applicable to the facts of the present case. It is a settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any judgment thereto. Sometimes difference of one circumstance or additional facts can make the world of difference, as held by the Hon'ble Supreme Court in the case of Padmausundra Rao another Vs. State of Tamil Nadu and others (2002 (3) SCC 533).

2. The action of the respondents in granting the respondents no.3 & 4 the benefits from the deemed date of recommendations by the UPSC (A-4) is illegal, wrong and against the service jurisprudence. It is a settled law that UPSC is a recommending body and not appointing body. The appointing body is the Govt. and unless an appointment letter is issued how can there be contract of service between the Govt. and the employees-respondents no.3 & 4. The appointment letter was issued on 19.12.2003 to respondent no.4 and thereafter she joined on 02.01.2004 and accordingly she was given seniority from the date of joining as shown in Annexure A-2. But to grant them the benefits from the date of recommendation by the UPSC is unwarranted and against the Rules in view of Rule 8 which deals with seniority and is reproduced hereunder:-

"Rule:8. Seniority:- The Seniority inter se of persons appointed to posts in each cadre of a service shall be determined by the length of continuous service on such post in that cadre of service. Provided that in case of person recruited by direct appointment who joins within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit determined by the Commission or the Board, as the case may be, shall not be disturbed;

Provided further that in case a person is permitted to join the post after the expiry of said period of four months in consultation with the Commission or the Board, as the case may be, his Seniority shall be determined from the date of joining the post; M

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned service before the persons referred to in the proceeding proviso joins, the person so referred shall be placed below all the persons of the next selection, who joins within the time specified in the first proviso."

33

3. That UPSC is a recommending body for the selected candidates for appointment and not appointing Authority. The appointing authority is the Govt. and unless an appointment letter is issued, there can be no contract of service between the Govt. and the recoméndee of the UPSC. It is a well settled law that recommendations are not binding on the Government. Govt. may choose not to appoint any of the recoméndees or may appoint few for the reasons best known to the govt. In the present case the appointment letter was issued on 19.12.2003 to respondent no.4 and thereafter she joined on 02.01.2004 and accordingly she was required to be given seniority from the date of joining as shown in Annexure A-2. But to grant them the benefits from the date of recommendation by the UPSC is arbitrary and against the Rules."

7. In the written statement filed on behalf of respondents no.1 & 2, it has been stated that the orders passed at Annexures A-1 & A-3 are legally valid as both the respondents were selected by UPSC earlier than the applicant but could not be issued appointment letters due to some clarification regarding status of their OBC/SC certificates being pending and they themselves were not at fault. The respondents no.3 & 4 have been given seniority in accordance with the decision dated 15.04.2004 (Annexure R-1) of this Hon'ble Tribunal in OA no.374/CH/2003 titled as Dr. Pratiksha Gupta and Others vs. Union of India and Others. The respondent no.3 was selected through UPSC and his name was recommended by UPSC vide letter dated 22.03.2002 and that of respondent no.4 vide letter dated 12.07.2002 whereas the applicant was also selected

As

through UPSC but her name was recommended vide letter dated 04.09.2002 i.e. five months after the respondents no.3 & 4. The applicant being a General Category candidate was issued appointment orders immediately and she joined on 27.11.2002 but both the respondents were not issued appointment orders and as these were kept in abeyance due to clarification being required regarding their SC/OBC certificates and not for any fault of theirs. Respondents no.3 and 4 joined on 19.01.2004 and 02.01.2004 respectively soon after they were issued their appointment letters. The seniority list attached at Annexure A-2 was only a provisional seniority list and the seniority no. assigned to the applicant was also provisional. The provisional seniority list was issued on 07.11.2007 and the respondent no.3 filed his objection vide his letter dated 20.11.2007 (Annexure R-2). Similarly respondent no.4 filed her representation vide letter dated 11.04.2008 (Annexure R-3). It is, therefore, incorrect that respondent filed her representation on 05.05.2008. Both the respondents were not satisfied with their seniority position and claimed seniority from the date they were recommended by UPSC. The selection of the applicant and pvt. respondents relates to Govt. Home Science College, Chandigarh, though the subjects are different and in the College, all lecturers cannot be of one subject as they teach different subjects. It is wrong to say that there is no similarity with the applicant. Since the pvt. respondents were selected and recommended by UPSC much earlier than the applicant, they were rightly declared senior to her in accordance with law. Their representation for granting

MS -

them seniority from the deemed date of joining and other pensionary benefits was rightly accepted and there is no infirmity in these orders at Annexures A-1 and A-3. These orders are based on legal precedents of this Tribunal. The orders have been issued after taking the advice of Finance Department (Annexure R-4). The respondents no.3 and 4 have only been given notional benefit of the date of joining. No financial benefit for the notional joining has been given to the respondents. The appointment orders have not been issued with retrospective effect but deemed date of joining has been given to them since their names were recommended by UPSC much before the applicant's name and they were not issued appointment letters due to some technical clarification about their OBC/SC status. All the affected persons were given opportunity of hearing before granting seniority to respondents no.3 & 4 and orders were passed as at Annexure A-1. The representation of the applicant has been rightly rejected as the applicant is junior to the respondents in the matter of selection and the respondents have been rightly given deemed date of joining and declared senior to the applicant. A detailed order is attached as Annexure A-1.

8. No written statement was filed on behalf of respondent no.3 despite service.

9. The written statement filed on behalf of respondent no.4 is on the same lines as written statement filed on behalf of respondents no.1 & 2.

As —

36

10. Arguments advanced by learned counsel for the parties were heard, when learned counsel for the applicant reiterated the facts and grounds taken in the OA. He stated that Dr. Pratiksha Gupta's case was not relevant to that of the respondents and no benefit need have been given to the respondents, on the basis of Pratiksha Gupta (supra). For the single post of Lecturer (Food & Nutrition) in the Government Home Science College, Chandigarh, the name of the applicant was recommended by the UPSC and she joined her duties on 27.11.2002. The private respondents were issued their appointment letters much later and joined their duties in January, 2004. The seniority of Lecturers had to be determined keeping in view their dates of joining and the private respondents who had joined in January, 2004 could not be placed above the applicant who had joined as Lecturer (Food & Nutrition) in November, 2002. Learned counsel also stated that except at the time of consideration of Lecturer for promotion as Principal, there was no impact of seniority on the service careers of the applicant and the respondents. He also stated that although the UPSC had recommended the names of the respondents for appointment as Lecturers, even this did not confer on them the right to be appointed and it was for the respondents-administration to take a decision regarding issue of appointment letter to them. To support his arguments, learned counsel relied on judgment in the case of **Mani Subrat Jain and Others Versus State of Haryana and Others** (1977) 1 SCC 486 and **Balakrushna Behera and another Versus Satya Prakash Dash** (Civil

Appeal No.4935 of 2007 decided on 22.10.2007). Also, since ³⁷ prior to their appointment in the Government Home Science College as Lecturers, the respondents had been working elsewhere they were not entitled to the benefit of service for the period from the date when they were recommended for appointment by the UPSC to the date that they actually joined service as Lecturers in Govt. Home Science College.

11. Sh. A.L. Nanda, learned counsel for respondents no.1 & 2 narrated the background of the matter. He stated that a common requisition was sent to the UPSC and common advertisement issued by the UPSC for making selection to the post of Lecturers in the Government Home Science College, Chandigarh. Due to ~~lack of clarity about the validity of the certificates relating to the OBC status of respondents no.3 & 4,~~ issue of appointment letters to these persons was delayed. It was only when the matter was clarified and the similar case of Dr. Pratiksha Gupta decided by the Tribunal that appointment orders were issued to the private respondents and later they were allowed notional benefit of seniority from the date when recommendations regarding their appointment had been issued by the UPSC. He further stated that representation of the applicant regarding her seniority had been decided after careful consideration by the Education Secretary, Chandigarh Administration and impugned order dated 31.07.2014 (Annexure A-1) issued. This detailed order clarified the position adequately

MS —

and the seniority of the private respondents and the applicant had been settled as per this order. 38

12. Sh. S.S. Pathania, learned counsel for respondent no.4 adopted the arguments advanced by Sh. A.L. Nanda, and stated that the appointment orders of the private respondents were delayed for no fault of theirs. The matter had been settled by the Apex Court in SLP/Civil Appeal No.4684 of 2001 titled as Chandigarh Administration Versus Surinder Kumar and Others. The Chandigarh Administration then gave appointments to the candidates recommended by the UPSC belonging to SC/OBC category of other states from 2001 onwards.

13. We have given our careful consideration to the matter. The material on record has been seen and 'speaking order' dated 31.07.2014 perused carefully. It is seen that impugned order dated 31.07.2014 was passed by the Education Secretary, Chandigarh Administration, keeping in view the judgment of the CAT in OA No.374/CH/2003 titled **Dr. Pratiksha Gupta and others versus Union of India and others** regarding grant of consequential benefits from the date of recommendation of UPSC. The order in the case of Dr. Pratiksha Gupta (supra) gained finality when the Apex Court dismissed SLP / Civil Appeal No.4684 of 2001 titled as Chandigarh Administration Versus Surinder Kumar and Others. Although the case of Dr. Pratiksha Gupta (supra) related to GMCH, Sector 32, Chandigarh, but the issue was identical as in the case of the private respondents in the present OA as this related to reserved category candidates

As —

(SC/OBC) whose appointments on the basis of recommendation of the UPSC were delayed on account of the fact that their certificates regarding SC /OBC status had not been issued by the Competent Authority in the Chandigarh Administration, but had been issued by the Competent Authority in the States to which they belonged. The appointment letters of the private respondents, although recommended by the UPSC in 2002, were delayed and were ultimately issued in December 2003 / January 2004, and they were able to join their duties in January 2004.

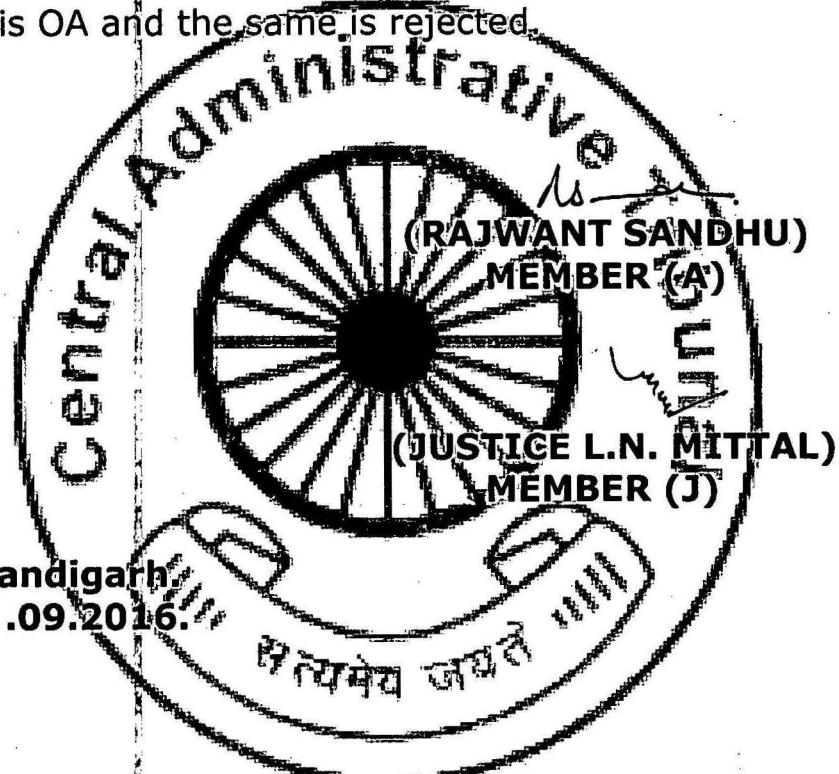
The private respondents represented to the respondent Administration for grant of seniority and consequential benefits of appointment as Lecturer from the date when they were recommended for the appointment. Keeping in view the orders of the CAT / Hon'ble High Court and the Apex Court in the matter relating to Dr. Pratiksha Gupta and others and similar other cases, the respondents issued the relevant orders regarding the consequential benefits vide order dated 12.11.2009 (Annexure A-3) and the seniority of the private respondents was also revised.

Objections had been invited regarding the provisional seniority list as on 01.10.2007 (Annexure A-2) and the private respondents had submitted their objections to the same. Taking into account these objections, their seniority was revised and they were placed above the last junior appointed as Lecturer in the Government Home Science College.

14. The applicant has raised various issues in her OA, mainly pressing that the seniority had to be determined on the basis of date of joining as Lecturer and the private respondents

MS —

who had joined as such in January, 2004, could not be given seniority above the applicant who had joined in 2002. Since this issue has been settled in similar cases by the Tribunal / Courts, in the circumstances in which Dr. Pratiksha Gupta and the private respondents no.3 & 4 found themselves, this objection of the applicant does not merit any consideration. The applicant has also been given a fair hearing by the respondent Department before the speaking order dated 31.07.2014 was issued. Hence, in view of the discussion above, we conclude that there is no merit in this OA and the same is rejected.



Place: Chandigarh.

Dated: 14.09.2016.