

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00137/2014

Order Reserved on 28.10.2014
Pronounced on 5.11.2014

...
CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

...
Uday Raj Yadav son of Sh. Hira Lal Yadav, age 45 years, Resident of House No.2331, Sector 37/C, Chandigarh.

... Applicant

Versus

1. Union of India through Home Secretary, Sector-9, U.T. Chandigarh.
2. Chief Engineer, U.T., Sector-9, Chandigarh.
3. Executive Engineer, C.P. Division No.2 (R), Chandigarh.
4. Executive Engineer-cum-CPIO, Horticulture Division, M.C., Chandigarh.
5. Mahabir Singh son of Sh. Ram Dhari, O/o Executive Engineer, C.P. Division No.2 (R), Chandigarh.

... Respondents

Present: Sh. Ajit Singh, counsel for the applicant.
Ms. Jyoti Choudhary, counsel for respondents No.1 to 4.
Sh. Yogesh Putney, counsel for Respondent No.5.

ORDER

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

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

"8 (i). That the appointment letter dated 08/08/2012 Annexure A/4 vide which Respondent No.5 was

—

12✓

appointed to the post of truck driver be set aside qua the Respondent No.5 as the Respondent No.5 did not possess the basic qualification for the appointment to the post of truck driver.

- (ii) That the respondents be directed to consider the applicant to the post of truck driver as the applicant is more suitable candidate for the same in comparison to Respondent No.5."

2. It has been stated in the O.A. that Respondent No.3 vide letter dated 19.10.2011 sought the list of eligible candidates for the post of truck driver in OBC category under the Circle of Superintending Engineer, Const-I/P.H./Electrical/Electricity OP Circle, Chandigarh and Office of the Commissioner, Municipal Corporation, Chandigarh (Annexure A-1). Vide letter dated 10.1.2012 (Annexure A-2) the name of the applicant was put into the list being eligible for the post of truck driver and he was called to appear in the office of Sub. Divisional Engineer Mech. Sub. Divn. Sector-26, Chandigarh, for further process. Respondent No.5 was also called to appear in the office of Sub. Divisional Engineer Mech. Sub. Divn. Sector-26, Chandigarh. Respondent No.5 namely Mahabir Singh has been shown as D/W Driver although he was appointed as Mali in his department. Vide office letter dated 15.5.2012 (Annexure A-3) two vacancies were approved against the OBC category and offer of appointment was issued to them vide letter dated 8.8.2012 (Annexure A-4). When the applicant came to

As —

13

know that Respondent No.5 was appointed to the post of truck driver, although he did not have any experience in this field, as he was working as Mali, he moved representation dated 25.10.2013 (annexure A-5) raising objection that Respondent No.5 did not have basic qualification for the post of truck driver and his appointment was illegal.

3. In the grounds for relief it has been stated as follows:

- a. Respondent No.5 is not having basic qualification for the post of truck driver as he was working as a "Mali" in his previous department. Thus appointment of Respondent No.5 to the post of truck driver is illegal, arbitrary and against the principles of natural justice.
- b. In the interview letter i.e. Annexure A-2, Respondent No.5 has been shown as daily wages Driver however from the very beginning he is working as "Mali" and thus not entitled for appointment to the post of truck driver.
- c. The applicant is having the basic qualification for the post of truck driver and having the experience of more than five years as the applicant was appointed to the post of Cleaner Work Charged (Regular) vide appointment letter dated 29.3.2001 and is having a good experience in the field of driving and other rules and regulations of the traffic and about the maintenance of the vehicle and is more suitable for the post of truck driver than Respondent No.5.



- 14
- d. The appointment of Respondent No.5 is liable to be set aside for the reason that he is not eligible for the post of truck driver having no qualification for the same and on the other hand the applicant is fully eligible to be appointed to the post of truck driver.
 - e. Even after intimating the respondents about the initial appointment of Respondent No.5 as Mali in his department, no action has been taken by the respondents on representations of the applicant and no speaking orders regarding the appointment of Respondent No.5 to the post of truck driver have been passed.

Hence this O.A.

4. In the written statement filed on behalf of respondents No.1 to 3, facts of the matter have not been disputed. It has been stated that the applicant along with four other candidates was called for Trade Test and interview to be conducted by the Committee consisting of 5 officers on 20.1.2012. The test was conducted for four candidates who came present. Sh. Tarsem Chand S/o Sh. Matu Ram and Sh. Mahabir Singh S/o Sh. Ram Dhari scored 12/20 and 11/20 marks respectively whereas other two persons Sh. Jasbir Singh scored 9/20 and the applicant Sh. Uday Raj scored 2/20 marks. Accordingly, Sh. Tarsem Chand and Sh. Mahabir Singh were appointed vide letter dated



8.8.2012 (Annexure R-2) on approval of the Superintending Engineer, Construction Circle-II, Chandigarh vide letter dated 15.5.2012 (Annexure R-5). The applicant was not found fit as he scored only 2/20 marks. He could only drive LMV and was at bottom amongst the four candidates who appeared for Trade Test and interview. While seeking applications the qualification was "Able to read and write and possessing the required license with 5 years experience on such vehicles". The post on which the daily wage/work charge employee was working has no relevance to the post to be filled. Besides, Sh. Mahabir Singh fulfilled the basic qualification for the post of Truck Driver as circulated vide letter dated 20.10.2011 (Annexure R-2) and further qualified the Trade Test and interview conducted by the Committee. It has further been stated that although the applicant possessed basic qualification for the post of Truck Driver and he was considered by the Committee but he could not qualify the Trade Test and interview as per the test result prepared by the Committee (Annexure R-6).

5. In the written statement filed on behalf of Respondent No.5 preliminary objection has been taken that the OA is barred by limitation as answering respondent was appointed as truck driver vide order dated 8.8.2012 and the present OA came to be filed on 13.2.2014 after prescribed period of limitation. It has also been stated that



Respondent No.5 had qualified in the Trade Test and the interview while the applicant had failed in the same and thus the applicant could not seek his own appointment as truck driver.

6. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicant drew attention to documents at Annexure A-6 and A-7 to substantiate his contention that Respondent No.5, Sh. Mahabir Singh, who had been appointed as truck driver did not fulfill eligibility criteria as he had been working as Mali in the respondent department and hence could not be considered to have the necessary experience of driving heavy vehicles.

7. Learned counsel for respondents no.1 to 3 stated that applicant's claim for being appointed as truck driver is without merit as he had failed in the driving test and having participated in the selection, he could not now challenge the same.

8. Learned counsel for Respondent No.5 drew attention to experience certificate dated 25.10.2011 which showed that Sh. Mahabir Singh, who belongs to OBC category, was engaged as daily wage Beldar under Horticulture Division of Municipal Corporation, Chandigarh w.e.f. 1998 and since then he was performing duties of driver. He had more than a decade experience of driving heavy vehicles such as truck.

As —

Learned counsel stated that the applicant himself was working as a cleaner and did not even have the necessary experience of driving heavy motor vehicles. Hence selection of Respondent No.5 as truck driver was in order and there was no merit in the present OA.

9. We have given our thoughtful consideration to the matter. It is evident from the certificate issued by Sub Division Engineer, Horticulture, Sub Division No.3, M.C. Chandigarh that Respondent No.5 had experience of more than a decade in driving heavy vehicles (trucks etc.). On the other hand, the applicant had failed in driving test held on 20.1.2012. Hence claim of the applicant for his appointment as truck driver is without merit and the same is rejected.

(DR. BRAHM A. AGRAWAL)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.

Dated: 5.11.2014.

KR*