

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA. No. 060/00140/2014

(Reserved on 02.12.2014)

Chandigarh, this the 9th day of December, 2014

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

Ms. Jatinder Kaur, Social Studies Mistress, Government Model
Senior Secondary School, Sector 32, Chandigarh.

...Applicant

Versus

1. Union Territory, Chandigarh Administration,
Through Secretary Education, U.T. Civil
Secretariat, Deluxe Building,
Sector 9, Chandigarh
2. Director Public Instructions (Schools),
Union Territory, Chandigarh Administration,
Deluxe Building, Sector 9, Chandigarh
3. Dr. Nirdosh Rai,
Lecturer (History),
Government Model Senior Secondary School,
Sector 47, U.T. Chandigarh.
4. Sh. Sohan Lal,
Lecturer (History),
Government Model Senior Secondary School,
Sector 46, U.T. Chandigarh.

.....Respondents

Present: Sh. N.P. Mittal, counsel for the applicant.

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Sh. Rohit Mittal, proxy counsel for Sh. Rakesh Verma,
counsel for respondents No. 1 & 2.
Sh. Jagdeep Jaswal, proxy counsel for Sh. D.R. Sharma,
counsel for respondents No. 3 & 4.

ORDER

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

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

- "ii) That the impugned promotion order A-1 dated 17.04.2013 qua the junior S.C. candidates promoting them to the post of Lecturers (PGT History) over the senior applicant against the law and judgments attached A-5, A-6, A-7 respectively be declared invalidated as out of 5 junior S.C. officials, junior most Respondent No.3 and 4 have been impleaded and as prayed by the applicant to invalidate their promotions being against the law and remaining 3 S.C. candidates junior to the applicant be declared invalidated suo-moto at the department's own level on the strength of Respondent No.3 and 4 respectively.
- iii) Respondent No.1 and 2 be directed to consider and promote the applicant to the post of Lecturer (PGT History) being senior w.e.f. 17.04.2013, date of issuance of impugned order A-1 and further direct to grant the applicant all consequential benefits viz-a-viz difference of arrears of salary and other related benefits viz seniority etc. to which she may be found entitled to under the rules and law."

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2. Through this OA, the applicant has challenged the promotion of persons belonging to the Scheduled Caste Category who are junior to the applicant, to the post of Lecturer (History) in the pay band of Rs. 10300-34800 + Rs. 5400/- Grade Pay. The two junior-most persons belonging to the SC Category promoted as Lecturer (History) have been impleaded as respondents No. 3 & 4 in the OA.

3. Averment has been made in the OA that the applicant is fully eligible for promotion to the cadre of Lecturer (History), to which she gave first option, being in service as SS Mistress since 1991, as per the provisions of the Chandigarh Education Service (School Cadre) (Group-C) Recruitment Rules, 1991 (Annexure A-3) and she also possesses the requisite qualifications as prescribed in these Rules. Applicant is senior to Respondent No.3 and 4 and other SC Category candidates who have been promoted. Her name is at Sr. No.186 of the seniority list up-dated as on 01.10.2012 (Annexure A-4) and the juniors Respondent No.3 and 4 are placed at Sr. No. 212, 224. The other SC Category candidates promoted vide impugned order A-1 are also junior to the applicant as

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they are placed at Sr. No. 208, 209 and 210 respectively. Hence the applicant is senior as compared to these SC category officials including Respondent No.3 and 4.

4. It is further stated that law is well settled by this Tribunal in O.A. No. 308/CH/2010 titled **Rajesh Shukla and another Versus Union of India and others**, decided by the CAT, Chandigarh Bench on 13.03.2012(Annexure A-5). This matter was decided in view of the Hon'ble Supreme Court judgment in Indra Sawhney's case, Virpal Singh Chauhan's case, M. Nagraj case and Suraj Bhan Meena's case according to which the State has to undertake an appropriate survey "on the quantifiable data regarding adequacy of representation" of the reservation. In nut shell, reservation is not applicable straightway in promotion until or unless survey is done by the respondents. In the present case, no such action has been taken by the respondents and straightway junior SC Category candidates who are not to be considered by the respondents being junior for promotion against the available vacancies have been considered. The case of the applicant is fortified from

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the judgment rendered by the Hon'ble Supreme Court in case titled **M.Nagraj and others Versus Union of India and others, reported as (2006)8 SCC 212** (Annexure A-6). It has been held therein that the State concerned will have to place before the Court requisite quantifiable data in each case and satisfy the Court that the reservation became necessary on account of inadequacy of representation of SCs/STs, which has not been done in the present case. The other judgments of Hon'ble Supreme Court of India prohibit the respondents from promotion to the higher posts of junior candidates from reserve categories in case titled **Suraj Bhan Meena and another Versus State of Rajasthan and others, reported as 2011 (2) RSJ 318** (Annexure A-7).

5. Consequently, impugned order A-1 qua Respondent No.3 and 4 as well as other SC Category candidates promoted as Lecturers (History), junior to the applicants are required to be invalidated by the Tribunal with directions to the respondent-authorities to consider case of the applicant for promotion to the post of Lecturer

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(History) from the date impugned order A-1 was passed in favour of junior SC Category candidates with all consequential benefits to which she may be found entitled to under the rules and law. On issuance of impugned order A-1, applicant moved a detailed representation on 15.05.2013 to Respondent No.1 (Annexure A-8) which is self-explanatory and prayed to consider her case for promotion as Lecturer in History w.e.f. 17.04.2013 with all consequential benefits. This representation is still pending in the office of Respondent No.1. Hence this OA.

6. In the written statement filed on behalf of the respondents 1 & 2, it has been stated that in accordance with Chandigarh Education Service (School Cadre) (Group C) Recruitment Rules, 1991 (Annexure A-3), the posts of Schools Lecturers are to be filled by promotion (45%), by Direct Recruitment, (45%) by deputation (20%). There are total 549 posts of School Lecturers. In accordance with Annexure III to Government of India, Ministry of Home Affairs, New Delhi letter No. 15039/71/97-Plg. Cell dated 6.8.1997 and Government of India, Ministry of Personnel, Public Grievances and Pension

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(Department of Personnel & Training), New Delhi letter No. 36012/2/96-Estt.(Res) dated 2.7.1997 adopted by the Chandigarh Administration, Department of Personnel vide letter No. 518-GOI-IH(7)-97/20493 dated 2.9.1997 (Annexure R-1), 15% of posts are reserved for promotion. As such, out of the 247 promotion quota posts of Lecturers (45% of total 549 sanctioned posts) 37 posts (15% of 247 posts) are to be filled up from amongst SC Category. It is admitted that the Respondent No. 3 (Dr. Nirdosh Rai, Sty. No. 212) and 4 (Sh. Sohan Lal, Sty. No. 224) are junior to the applicant (Mrs. Jatinder Kaur, Sty. No. 186) in the Master Cadre but they have been promoted as Lecturer in History to fill the posts meant for SC Category. Further, no junior person to the applicant in the General Category has been promoted as Lecturer in History. After passing of order dated 13.3.2012 (Annexure A-5) by this Bench in OA No. 308/CH/2010 titled as Rajesh Shukla & Anr. Vs. UOI & Ors., order dated 19.10.2006 (Annexure A-6) by the Hon'ble Supreme Court of India in Writ Petition No. 61 of 2002 titled as M. Nagraj and Ors. Vs. UOI & Ors. and dated 7.12.2010 (Annexure A-7) in Civil Appeal No. 6385 of 2010 titled as Suraj Bhan Meena and Anr. Vs. State of Rajasthan & Ors., the Department of Personnel, Chandigarh Administration has not issued any

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guidelines/instructions to adopt/follow for reservation in promotion except that of letter No. IH(I)-2012/20920 dated 5.11.2012 (Annexure R-2) regarding minutes of meeting held on 18.9.2012 under the Chairmanship of Home Secretary, Chandigarh for implementation of CAT judgement dated 18.9.2012 in OA No. 1089/CH/2010 and OA No. 870/CH/2011 whereby it was decided that inadequacy of representation simply means that in case the vacant posts are to be filled and if the candidate from reserved category are less than the prescribed percentage meant for this category then there is inadequacy of representation.

7. No written statement has been filed on behalf of respondents No. 3 & 4 in spite of ample opportunity having been afforded to them to do so.

8. Arguments advanced by the learned counsel for the parties have been heard. Learned counsel for the applicant stated that the persons at Sr. No. 25, 32, 47, 65 and 72 in the order dated 15/17.4.2013 were junior to the applicant as was evident from the Seniority List annexed as Annexure A-4 with the OA. The applicant was at Sr. No. 186 in this list while the respondents were far junior and this fact was undisputed. Learned counsel further stated that the law in the matter was now well settled and

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reservation in promotion could not be given in view of the judgement in CWP No. 13218 of 2009 titled **Lachhmi Narain Gupta and others Vs. Jarnail Singh** and Others decided on 15.7.2011. He further stated that a similar matter had been decided vide order dated 3.7.2014 in OA No. 1051/CH/2013 and this order had been upheld in CWP No. 15067 of 2014 titled **HC Balwant Singh Vs. UOI & Ors.** decided on 1.8.2014. He pressed that the promotions allowed in favour of the SC teachers as Lecturers, who were junior to the applicant, be quashed and the applicants' claim for promotion be considered from the date when these ineligible persons were promoted.

9. Learned counsel for the respondents No. 1 & 2 reiterated the content of the written statement. He admitted, however, that no survey had been carried out by the Chandigarh administration regarding representation of SC/ST employees and hence the mandate contained in *M. Nagraj(supra)* had not been followed.

10. Proxy counsel for respondents No. 3 & 4 did not put forth any arguments.

11. We have given our thoughtful consideration to the matter. It is quite clear that the juniors of the applicant who belong to the SC Category, have been promoted as Lecturers

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(History) vide order dated 15/17.4.2013 while the applicant has not been promoted. Hence, the order dated 15/17.4.2013 is quashed qua respondents No. 3 & 4. The respondent administration is directed to review the promotion of Lecturers (History) keeping in view the judgments in M. Nagraj (supra) and Lacchmi Narain Gupta(supra) and consider the claim of the applicant for promotion from the date when her juniors were promoted. Such consideration may be completed within a period of 45 days and consequential benefits, if any, due to the applicant may also be released to her within this period. No costs.

(RAJWANT SANDHU)
MEMBER(A)

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

Dated: December 9, 2014.

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