

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

Pronounced on: 22.8.2015
Reserved on : 25.08.2015

OA. No. 060/00477/14
MA No. 060/00858/15

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

Manju Bala D/o Sh. Ramesh Chander, aged 43 years, working as Junior Assistant, O/o IGP, UT Chandigarh, R/o House No. 1506, Sector 23-B, Chandigarh.

.....Applicant

BY ADVOCATE: **Sh. Rohit Seth**

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Home Affairs, New Delhi.
2. Chandigarh Administration, Chandigarh through its Advisor to the UT Administrator.
3. Home Secretary, Chandigarh Administration, Chandigarh.
4. Inspector General of Police, Union Territory, Chandigarh Police Headquarters, Additional Deluxe Building, Sector 9, Chandigarh.
5. Sh. Om Parkash S/o Sh. Shiv Ram, working as Clerk, O/o IGP, UT Chandigarh.

Ab

.....Respondents

BY ADVOCATE: Sh. Arvind Moudgil for respdts. 1-4
Sh. Aman Arora for respdt.No.5.

ORDER

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

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

- (i) Quash action of the respondents in overlooking the interim order dated 30.07.2013 (Annexure A-1) and interim order dated 01.11.2013 (Annexure A-2) passed by this Tribunal staying further promotions of reserve category to the cadre of Assistant Sub Inspectors and Inspectors in the light of law as settled by this Tribunal in the cases of Inspectors of UT, Chandigarh relying upon the decisions rendered by the Apex Court, in OA Nos. 308-CH-2010, 870-CH-2011 and 1080-CH-2011 decided on 13.03.2012 (Annexure A-3) which orders stand implemented by the official respondents qua the category of inspectors of UT Police vide order dated 15.01.2013 (Annexure A-4) ignoring the seniority of applicant who is working as Junior Assistant by bringing in a person of reserve category i.e. respondent No. 5 who is much junior to the applicant in the Clerical cadre and not even a Junior Assistant as on date and who is working as Clerk, for consideration and promotion as Senior Assistant without taking any decision on the representation dated 24.02.2014 (Annexure A-5) submitted by the applicant against such illegal action of the respondents which is in violation of law laid down by Apex Court in the case of M. Nagraj, U.P. Power Corporation and by this Tribunal.
- (ii) Direct the respondents not to give any benefit of accelerated promotion to respondent No. 5 by resorting to reservation in the light of authoritative pronouncements by this Tribunal in Prem

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Singh and Others etc. bearing OA Nos. 308-CH-2010, 870-CH-2011 and 1080-CH-2011 decided on 13.03.2012 (Annexure A-3) i.e. case of same department and consider and promote the applicant as Senior Assistant being in the zone of consideration from due date along with all the consequential benefits of pay and allowances and seniority.

2. Interim order was sought praying that the respondents be restrained from promoting the juniors in the feeder cadre as Senior Assistants. When the matter was taken up for consideration on 29.5.2014, the respondents were restrained from making any promotion to the post of Senior Assistants by giving reservation and this position continues till date.

3. It has been stated in the OA that the applicant joined the Chandigarh Police initially as Constable on 02.04.1990 and she joined the clerical cadre on 14.5.1998 as Clerk. She was further promoted to the post of Junior Assistant w.e.f. 04.05.2007. As per the draft seniority list of Ministerial staff as on 31.3.2013 circulated by letter dated 22.4.2013, respondent No. 5 Sh. Om Parkash was placed at Sr. No. 16 as he joined the cadre of Clerk on 22.05.2009. He had never been promoted as Junior Assistant and did not have the requisite experience for further promotion. However, the respondents were considering respondent No. 5 for promotion as Senior Assistant and in this way, the applicant who was

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working as Junior Assistant since long and was far senior to respondent No. 5, would be superseded.

4. In the grounds for relief, reference has been made to the judgement dated 13.03.2012 of the Tribunal in OAs No. 308/CH/2010, 870-CH-2011 and 1080-CH-2011 to the effect that there is no collection of data by UT Chandigarh and hence reservation in promotion could not be allowed keeping in view the judgement in **M. Nagraj & Ors. Vs. UOI & Ors., AIR 2007 SC 71**

5. In the written statement filed on behalf of respondents No. 1-4, it has been stated that the final seniority list in respect of Clerk/Jr. Assistant has been issued vide Office Order No. 41816-22/UT/E-III dated 27.08.2014 vide which the applicant stands at Sr. No. 3 and Smt. Poonam Bhall, Jr. Assistant at Sr. No. 4. There are two vacancies of Sr. Assistant, one is meant for SC category by backlog as per the roster of reservation. The name of respondent No. 5 was approved on file for promotion as Senior Assistant against SC backlog vacancy but before the order could be issued, this Tribunal framed order of stay and accordingly the promotion orders have not been issued as yet. There being backlog of SC category, the respondent No. 5 being the senior most SC category Clerk was duly considered and approved for promotion but in view of the stay

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of the CAT, orders were not issued. The orders dated 13.3.2012 of this Court passed in OA No. 308/2010 have been complied with. However, the same are subject matter of CWP No. 24976 of 2012 and 2802 of 2013 pending before the Hon'ble High Court of Punjab and Haryana, Chandigarh.

6. Respondent No. 5 adopted the written statement filed on behalf of respondents No. 1-4.

7. In the rejoinder filed on behalf of the applicant, it has been stated that once it had been settled by this Tribunal in the cases of UT Police Department that there cannot be any reservation in promotion and such orders had been upheld by the Hon'ble High Court, there is no question of filling any backlog SC vacancy. One such OA on the same issue was No. 1051/CH/2013 titled as Satya Parkash which was allowed on 03.07.2014 and against the same, CWP No. 15067/2014 titled as HC Balwant Singh Vs. UOI & Ors. was dismissed on 01.08.2014. In cases of Inspectors of UT Police also, the order stood implemented by the respondents by accepting the same. The writ petitions are by the private respondents in the OA.

8. MA No. 00858/15 has been filed for modification/vacation of order dated 29.5.2014 restraining the department from making any

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promotion to the post of Senior Assistants by giving reservation. It has been stated that out of the three vacancies of Senior Assistants to be filled by promotion from amongst the feeder cadre, two posts out of three may be permitted to be filled so that the work does not suffer. One post of Senior Assistant can be kept vacant subject to the outcome of the present OA.

9. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant relied on judgement in OA No. 1051/CH/2013 titled as Satya Parkash that had further been upheld by the Hon'ble High Court of Punjab and Haryana as had been noted in judgement dated 16.10.2014 in OA No. 1490/CH/2013 titled Harminderjit Singh Vs. UOI and Ors. He stated that OA No. 1051/CH/2013 related to the Police Department of the UT Chandigarh and the respondents could not take a different view in the matter of promotion of Senior Assistants than as had been held in the order dated 3.7.2014 that promotions in Chandigarh Police Department must take place without the consideration of reservation of posts that are to be filled by promotion.

10. Learned counsel for the respondents No. 1-4 reiterated the content of the written statement. M

11. Learned counsel for the respondent No. 5 asserted that the respondents were bound to abide by the roster points for promotion in the category of Senior Assistants and since one of the vacant posts fell on the roster point reserved for SC, the respondent No. 5 who was the senior most person in the Clerical Cadre belonging to SC, was entitled to be considered for promotion.

12. We have given our careful consideration to the matter. The issue as to whether reservation for promotion can be allowed in posts falling in the promotion quota in various departments under the Chandigarh Administration is no longer res integra. Since no survey had been carried out to determine the adequacy or otherwise of the representation of persons belonging to SC/ST category amongst the Government employees of the UT Chandigarh, keeping in view the ~~the~~ judgement in CWP No. 13218 of 2009 titled "**Lacchmi Narain Gupta & Ors. Vs. Jarnail Singh & Ors.**" decided on 15.07.2011, the respondent department cannot promote the Clerks/Jr. Assistants as Sr. Assistants while allowing the benefit of reservation. Hence, the OA stands allowed and the respondent department may go ahead with promotions to the posts of Senior Assistants without allowing benefit of reservation to any person belonging to SC/ST category in the feeder cadre. As _____.

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13. MA No. 060/00858/2015 also stands disposed of accordingly. No costs.

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(RAJWANT SANDHU)
MEMBER(A)

B. A. Agarwal

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

Dated: 27.8.2015
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