

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(Order reserved on 30.10.2015)

O.A No. 060/00213/2014 Date of decision - 6.11.2015

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

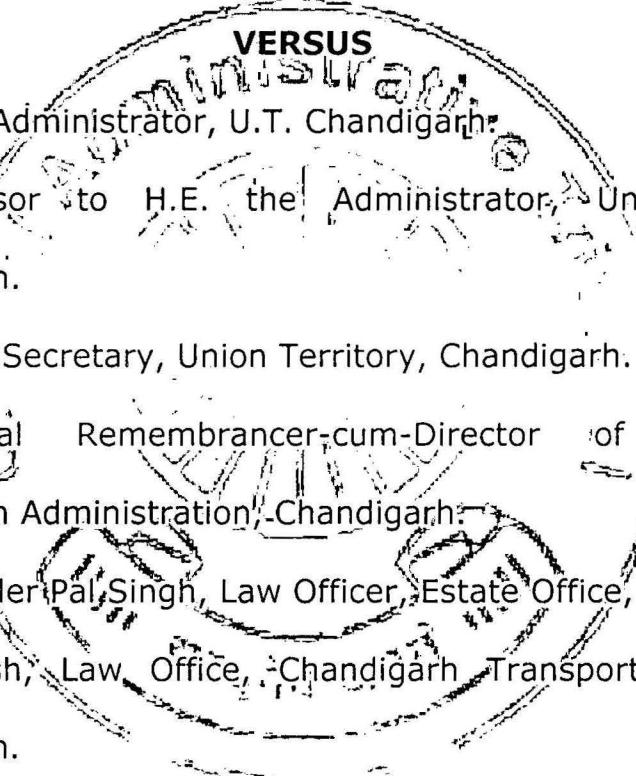
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Miss Priya Bhardwaj daughter of Sh. B.L. Bhardwaj, Resident of House No.3457, Sector 40-D, Chandigarh.

...APPLICANT

BY ADVOCATE: Sh. S.K. Sud.

VERSUS



1. The Chief Administrator, U.T. Chandigarh.
2. The Advisor to H.E. the Administrator, Union Territory, Chandigarh.
3. The Home Secretary, Union Territory, Chandigarh.
4. The Legal Remembrancer-cum-Director of Prosecution, Chandigarh Administration, Chandigarh.
5. Sh. Surender Pal Singh, Law Officer, Estate Office, Chandigarh.
6. Sh. Rakesh, Law Office, Chandigarh Transport Undertaking, Chandigarh.
7. Sahil Singla, c/o Office of L.R.-cum-Director of Prosecution, U.T. Chandigarh. (Deleted vide order dated 20.04.2015).
8. Vishal Tiwari, C/o Office of LR-cum-Director of Prosecution, U.T. Chandigarh. (Deleted vide order dated 20.04.2015).
9. Harpal Singh C/o Office of LR-cum-Director of Prosecution, U.T. Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Arvind Moudgil, respondents no.1 to 4.
Sh. Sandeep Siwatch, proxy for Sh. R.K. Sharma,
Respondents no.5 & 6.

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Central Administrative Tribunal Act, 1985 to quash the appointment of private respondent nos. 5 & 6 who belongs to reserved categories on the ground that they are not suitable for appointment as Law Officers. He further sought direction to the respondents to offer her appointment against that post.

2. The facts which lead to filling of the present application are that the Chandigarh Administration issued an advertisement in the daily news paper i.e. Hindustan Times on 04.09.2013, inviting application for filling of six posts of Law Officers in the Law and Prosecution Department out of which three post were for candidates belonging to general category, one for S.C and two posts for OBC. Later on the respondents decided to fill up only five posts by reducing one post from the general quota. The applicant applied against the unreserved vacancy and was subjected to written test and then interview, the result of which was declared on 30.1.2014 and the name of the applicant did not find place in that list. The respondents have also issued waiting list by keeping one candidate in the SC category and two in general category. The applicant has challenged the impugned selection and appointment of private respondents, who belong to reserved category, on the ground that since they have secured less marks than the applicant, who belongs to general category, they are not suitable for appointment.

3. In support of his prayer, the applicant has taken the following legal grounds, which inter-alia, read as follow:

a) In view of the facts stated above, the applicant is entitled to be given the third post of Law Officer in General Category as per terms and conditions of Public Notice read with Notification dated 20th December, 2001. As mentioned in the preceding paragraphs of application, once the written test is held containing objective type questions of 100 marks with negative marking, then the selection process is completed and there is no scope for holding of interview.

b) In this connection, the judgment of Hon'ble Division of this court in Gurdip Singh Vs. R.N. Attri reported in 2000 (3) RSJ 97 based on Apex Court judgments if fully applicable.

c) It is further submitted that selection of SC/OBC Category with very low marks is also against the provisions of advertisement which laid down that in case suitable candidates are not found, then impugned posts should be given to General Category Candidates. It is further submitted that waiting list of Sahil Singla and Vishal Tiwari and Harpal Singh is besides illegal and based on extraneous consideration is otherwise unsustainable.

4. Mr. Sud Learned counsel for the applicant vehemently argued that action of the respondents in offering an appointment to the reserved category candidates is illegal, arbitrary and liable to be set aside as they did not satisfy the standards and norms as prescribed in the advertisement. He submitted that even the respondents have not disclosed the criteria before selection. Even under the rules there is no provision for holding interview once they have conducted the written test. Thus, the appointment of private respondents is liable to be set aside.

5. The official respondents and private respondents' no. 5 & 6 have filed their separate written statement wherein they have taken a preliminary objection that the applicant cannot be allowed to challenge the selection process after declare unsuccessful. They placed reliance upon the following judgments:-

- **Simarjit Singh Tiwana Vs. State of Punjab**, 2012(4) SCT 328 decided by the Punjab and Haryana High Court on 23.07.2015
- **Chander Parkash Tiwari Vs. Shankuntla Shukla**, 2002(2) SCT 1093 decided by Hon'ble Supreme Court of India decided on 09.05.2002.
- **K.A. Nagamani Vs. India Airlines & Ors.**, 2009(5) SCC 515.
- **Dhanjay Malik & Ors. Vs. State of Uttarakhand & Ors.**, 2008(4) SCC 515.
- **Ramesh Kumar Vs. High Court of Delhi** AIR 2010 SC 3714.

On merits, it is submitted that the private respondents had secured higher marks in their respective category, therefore, they were offered appointment and the claim of the applicant cannot be considered under the said category.

6. In support of the above, Sh. Arvind Moudgil, learned counsel for respondents no. 1 to 4 vehemently argued the present O.A deserve to be dismissed on the ground that after having participated in the selection process, one cannot challenge the selection and the selection procedure which was known to him/her prior in time. He argued that procedure was notified when the advertisement was issued. Thus he prayed that the petition be dismissed being devoid of merit.

7. Sh. Sandeep Siwatch, proxy for respondent's no. 5 & 6 adopted the same arguments as raised by the learned counsel for the official respondents.

8. We have given our thoughtful consideration to the entire matter and perused the pleadings as available on record with the able assistance of learned counsel for the parties.

9. Firstly, we will decide the preliminary objection raised at the hands of the respondents qua estoppel that the applicant cannot challenge the selection after participation in the selection process. In this connection, we may refer to the decision of the Supreme Court in

Dr. G. Sarana v. University of Lucknow and Ors. reported in (1976) 3 SCC 585 wherein also a similar stand was taken by a candidate and in that context the lordships had declared that a candidate who has participated in the selection process cannot challenge the validity of the said selection process, after appearing in the said selection process and taking opportunity of being selected.

Para 15 inter alia reads thus:

15. ... He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee.

10. In **P.S. Gopinathan v. State of Kerala and Ors. Reported in (2008) 7 SCC 70**, relying on the above principle, the Hon'ble Apex court held thus;

44. ... Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15-7-1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the appellant is estopped and precluded from questioning the said order dated 14-1-1992. The application of principles of estoppel, waiver and acquiescence has been considered by us in many cases, one of them being G. Sarana (Dr.) v. University of Lucknow....

11. In the case of Union of India and Ors. Vs. S. Vinodh Kumar and Ors. reported in (2007) 8 SCC 100 at paragraph 18 it was held that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. Besides, in K.H. Siraj v. High Court of Kerala and Ors. reported in (2006) 6 SCC 395 in paragraph 72 and 74, it was held that candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks, on being unsuccessful in interview, could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppel.

12. Similar point came up for consideration before the Hon'ble Supreme Court in case of Vijendra Kumar Verma -vs- Public Service Commission Uttarakhand reported in 2011 (1) SCC 150, whether a challenge to a selection process was thrown out being conducted de hors the prescribed procedures.

13. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., (AIR 1986 SC 1043), it has been clearly laid down by a Bench of three learned Judges of the Hon'ble Supreme Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

14. The underline theme of the above judgments lead us to escapable conclusion that once a candidate has participated in the selection process, then later on he/she cannot challenge the same on

the ground of criteria adopted by the respondents being unfair as it was known to him/her prior to participate in the selection, on the principle of estoppel. In the case in hand the respondents had already declared the procedure to be adopted by them well in advance. Despite that the applicant participate to the procedure without any protest, therefore we are in agreement with the submission made at the hands of the respondents that the petition is to be dismissed. Even otherwise on the one hand applicant seeks direction to invalidate selection and appointment of private respondents, who were given appointment in reserve categories and then to appoint her against that post, and on the other hand she goes to allege that the entire selection process is not according to law as the rule formation does not talk of interview, therefore she is blowing hot and cold in the same breath which is un-acceptable. Be that it may, she has failed to establish her allegations. Merely because the respondents have conducted an interview cannot invalidate selection unless there are allegations of malice, because *viva voce* used as a noun means an 'oral examination' and is believed to be an efficacious instrument for the estimation of suitability for a civil post. The purpose of *viva voce* is the discovery of abilities and deficiencies not displayed by the performance in the written examination. Thus also the applicant has no case. In this regard we may note here that it is well settled by now that the court in judicial review cannot interfere in the selection process unless malafide or extraneous considerations are alleged. Reference in this regard to decision in the case of **Vijay Syal vs. State of Punjab 2003(9) SCC 401.**

15. In the back drop of the aforesaid discussion, we are in agreement with the submissions made by the learned counsel for the

respondents that after participation and declaring unsuccessful in the selection, the applicant cannot challenge the selection. No other point was argued. Accordingly, the present O.A is dismissed being devoid of merits.

16. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Dated: 6.11.2015

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