

14

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00638/2014

Date of Decision : 9.12.2014

Reserved on: 03.12.2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

Gurjinder Singh, S/o Sh. Joginder Singh, R/o Village Bhadurgarh P.O.
Talaina Tehsil and District Fatehgarh Sahib (Punjab).

... **Applicant**

Versus

1. Union of India through Secretary to Government of India, Ministry of Home Affairs, New Delhi.
2. Chandigarh Administration through its Secretary Transport, UT Chandigarh.
3. Divisional Manager, Chandigarh Transport Undertaking, UT, Chandigarh.

... **Respondents**

Present: Mr. D.R. Kaith, counsel for the applicant
Mr. Rohit Mittal, proxy for Mr. Rakesh Verma, counsel for the respondents

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 that the condition of upper age for appointment as 25 years prescribed for the appointment of Helper Electrician in advertisement dated 03.07.2014 by respondent no.3 be quashed and same may be treated as 37 years as prescribed under Punjab Civil Services (General and Common Condition of Service) Rules,

15

1994 which are applicable to the employees of Chandigarh Administration for their direct appointment. Direction has been sought to respondent no.3 to entertain the application of the applicant for the post of Helper Electrician in pursuance of advertisement dated 03.07.2014.

2. It has been stated in the OA that respondent no.3 issued advertisement dated 03.07.2014 (Annexure A-6) inviting applications online for appointment of Helpers in various trades including that of Electrician. In this advertisement, the age for eligibility has been prescribed as between 18 to 25 years as on 01.01.2014. While the applicant fulfilled the educational qualifications for the post of Helper Electrician but he had been made ineligible as he had crossed the upper age limit indicated in the advertisement i.e. 25 years.

3. In the grounds for relief it has, inter-alia, been stated as follows:-

- i) After adopting Punjab Rules and regulations the service condition of employees of Chandigarh Administration and by framing Rules known as Chandigarh Employees (Condition of Service) Rules, 1992, the Chandigarh Administration cannot apply any other rules except the rules as applicable to the employees of State of Punjab to the corresponding posts. Therefore, limiting the upper age to 25 years is illegal.
- ii) As per the Punjab Rules known as Punjab Civil Services (General and Common condition of Services) Rules, 1994, age prescribed for direct appointment to Govt. service is 37 years therefore, prescribing upper age for appointment to the post of Helper Electrician by respondent no.3 in advertisement dated 03.07.2014 is contrary to the rules.

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- iii) It is settled law as held in a judgment as reported in 2013(3) RSJ 1 that no new condition can be imposed in the advertisement in the presence of statutory rules.
- iv) The Hon'ble Supreme Court have upheld judgment of this Tribunal in case of Rajesh Kumar Basandhi as reported in 2004 (1) SCT 680 to the effect that Chandigarh Administration cannot prescribe any other upper limit of age except the age prescribed by the State of Punjab, therefore, prescribing the upper age upto 25 years in the advertisement dated 03.07.2014 (Annexure A-6) is illegal and against the settled law.

Hence this OA.

4. In the written statement filed on behalf of the respondents, it has been stated that the Chandigarh Administration had issued the 'Chandigarh Transport Department Service (Group 'C' Non-Ministerial Workshop Posts) Recruitment Rules, 2007' and hence was not bound by the provisions in the Punjab Government in this regard. Besides, the respondent Department was not bound by the Punjab Government Rules as the Recruitment Rules had been made in the exercise of the powers conferred on the Administrator in terms of Article 309 of the Constitution of India in so far as they do not relate to the conditions of service of the employees of the Chandigarh Administration.

5. In the rejoinder filed on behalf of the applicant, it has been stated that the Chandigarh Transport Department Service (Group 'C' Non-Ministerial Workshop Posts) Recruitment Rules, 2007, have been passed by the Administrator, UT, Chandigarh and the same cannot become enforceable rules unless the same are passed by the Central Govt. Till

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the date the same have not been passed by the Central Government, the Punjab Rules shall prevail. The powers of framing the rules to govern the service conditions of employees of UT, Chandigarh by the Administrator after adopting the Punjab Rules in 1992 have been already declared illegal by this Tribunal in OA NO.679/CH/2006 as per judgment dated 02.07.2007 after following the judgment of the Hon'ble Supreme Court. Relevant part of the judgment reads as under:

“24. We have also considered the judgment in the case of T.R. Kapur (supra). Even though it related to the rights of employees who were in existence as on 01.11.1996 yet, after the notification of 13.01.1992 issued by the President changing conditions of service through the impugned notification of the rules in this case, the Administrator has definitely changed the conditions of service of the applicants. We are clearly of the opinion that the Administrator had no powers to change the conditions of service by notification of the above mentioned rules particularly to their disadvantage.”

Therefore, unless and until these rules are approved by the Central Government, they remain only draft rules and in the presence of Punjab Rules these rules cannot be applied. As such there is no need to challenge the same till the same have not been passed by the Central Government (Annexure A-8).

6. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant reiterated the content of the OA and the rejoinder and stated that the Administrator was not competent to issue the Chandigarh Transport Department Service (Group 'C' Non-Ministerial Workshop Posts) Recruitment Rules, 2007. These rules could

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only be enforced if they had been approved by the Central Government and issued in the name of the President of India.

7. Mr. Rohit Mittal, proxy for Mr. Rakesh Verma, learned counsel for the respondents stated that the Recruitment Rules, 2007 were valid as these had been issued under Article 309 of the Constitution of India. The Chandigarh Administration was free to formulate its own rules in the Department and the Punjab Rules were applicable only in cases where the Chandigarh Administration had not framed their own rules.

8. We have given our thoughtful consideration to the matter. The judgments cited by the learned counsel for the applicant in support of his contention that the Chandigarh Administration could not prescribe the age limit for direct recruitment as it was bound in this regard by the Punjab Civil Services (General and Common Condition of Service) Rules, 1994, wherein for direct appointment to technical posts, the age limit has been prescribed as 18 to 37 years are not applicable in the present case as these are clearly distinguishable on facts. Prescribing the age limit for recruitment cannot be construed as a condition of service. Conditions of service apply to employees while the applicant is not an employee but only an aspiring candidate for selection as Helper Electrician. Since the Chandigarh Administration has issued its own rules for the Group 'C' Non-Ministerial Workshop posts in the Chandigarh Transport Undertaking, the age limit prescribed in these rules will be operative rather than that of 18 to

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37 years as prescribed in the Punjab Civil Services (General and Common Condition of Service) Rules, 1994. Hence we conclude that there is no merit in this OA and the same is dismissed. No costs.

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(RAJWANT SANDHU)

ADMINISTRATIVE MEMBER.

B. A. Agarwal
(DR. BRAHM A. AGRAWAL)

JUDICIAL MEMBER

Place: Chandigarh
Dated: 9/2/2014

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