

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

ORIGINAL APPLICATION NO.060/00702/2014

**Order Reserved on 19.03.2015
Pronounced on 24.03.2015**

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

Jitender Kumar son of late Sh. Subhash, resident of House No.151, Sector-18, Panchkula presently working as Personal Assistant, Department of Gastroenterology, Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh.

... Applicant

Versus

- 1. Union of India through its Secretary, Ministry of Health and Family Welfare, Department of Health, Government of India, New Delhi.
- 2. Director, Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh.
- 3. Deputy Director (Admn.), Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh.
- 4. Senior Administrative Officer (Institute), Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh.
- 5. Assistant Administrative Officer (I), Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh.
- 6. Sandeep Kumar appointed under Dr. P.N. Chuttani Charitable Centre now posted as Personal Assistant, O/o Legal Cell, PGIMER, Chandigarh.
- 7. Amrit Pal Singh, Personal Assistant, O/o Deputy Director (Admn.), PGIMER, Chandigarh.
- 8. Deepak Jugran, Personal Assistant, O/o Advance Eye Centre, PGIMER, Chandigarh.

... Respondents

Present: Sh. Sandeep Kotla, counsel for the applicant.
Sh. Rajesh Garg Sr. Advocate along with Ms. Nimrata Shergill, for respondents no.1 to 5.
Sh. D.R. Sharma, counsel for respondent no.6.

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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, praying that the application may be allowed, Memo No.PGI-EII(I)-2014/F-54 dated 31.01.2014 passed by Assistant Administrative Officer and provisional gradation list of Personal Assistant dated 01.01.2013, whereby the seniority of the applicant have been wrongly fixed be quashed. The applicant is also claiming the seniority as per the roster point of reserved category as applicable to the Institute. Direction has been sought to the respondents no.2 to 5 to fix the seniority of the applicant as per the roster point of Schedule Caste and also for counting of the ad hoc service of the applicant from the date of initial appointment i.e. 15.01.2001 in the interest of justice.

2. Background of the matter is that the applicant joined PGIMER on 15.01.2001 on adhoc basis on the post of Stenographer against the quota for SC. His services were regularized on 02.11.2002. The respondents issued notice dated 04.06.2011 (Annexure P-2) regarding filling of 8 posts of Personal Assistant by promotion and 11 posts to be filled through Limited Departmental Examination Quota. The applicant appeared in the departmental test for both categories i.e. by way of promotion on 16.11.2011 and LDCE on 17.11.2011 and the results

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were declared vide office order dated 09.12.2011 (Annexure P-3 and P-3/A). After recommendation of Departmental Promotion Committee dated 15.12.2011, the applicant was promoted to the post of Personal Assistant on 16.12.2011 (Annexure P-4). The PGI administration circulated provisional gradation list dated 01.01.2013 to all the working Personal Assistants and invited objections regarding their seniority. The applicant submitted his representation in this regard as he was shown junior to some of the employees who were junior to him as stenographers (Annexure P-6). The representation was rejected through a non speaking order dated 31.01.2014 (Annexure P-9). The respondents did not give para wise findings on the objections raised by the applicant regarding the seniority list. It is also contended that the respondents have not considered the reservation policy and roster points have not been followed and thus persons junior to the applicant have been placed senior to him in the gradation list.

3. It is further stated that respondents no.6 to 8 have joined service as under:

Respondent No.6 Sandeep Kumar :	01.09.2003
Respondent No.7 Amit Pal Singh :	02.09.2003
Respondent No.8 Deepak Jugran :	29.08.2003

meaning thereby that respondents no.6 to 8 are junior to the present applicant. The official respondents have given seniority in the gradation



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list circulated on 01.01.2013 to respondent no.6 to 8 bye-passing the right of the applicant as the applicant is very much senior to respondent no.6 to 8. In the provisional gradation list the competent authority has shown joining of the applicant on 02.11.2002 whereas it should be 15.01.2001. Respondents no.6 & 8 Sandeep Kumar and Deepak Jugran were initially appointed as Stenographers in the Dr. P.N. Chuttani Charitable Centre and only the post of respondent no.8 had been merged in the PGI rolls. Till date the post of respondent no.6 had not been merged in the PGI rolls. Thus respondent no.6 has no right to have participated in the departmental examination process held by respondent no.2 to 5 as respondent no.6 is neither the employee of respondent no.2 nor working with respondent no.2 in any manner. As such respondent no.6 is not entitled for any benefit given by respondent no.2 to 5. Respondent no.6 has been given the benefits bye-passing the service rules as applicable to the Institute. Surprisingly, the persons who were not even born in the cadre have given name and designation on the PGI rolls by ignoring the allied rules and bye-passing all the service rules as applicable to the Institute. This fact came into the knowledge of the applicant when he moved an application under RTI on 18.07.2014 and the Institute has supplied information on 05.8.2014 admitting that till date respondent no.6 is not on the roll of PGI, hence respondent no.6 was not to be permitted

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to appear in the examination held by the Institute on 16.11.2011 and given seniority above the applicant. Hence this O.A.

4. In the written statement filed on behalf of the respondents no.1 to 5 preliminary objection has been taken that the private respondents whose appointment the applicant is praying for to be quashed were appointed in the year 2003 and hence the OA is barred by limitation and also by conduct of the applicant as he did not challenge their appointment earlier nor made any representation or appeal against their appointment. It has further been stated that the applicant was appointed

► in the Institute on adhoc basis on 15.01.2001 and his services were regularized w.e.f. 02.11.2002 alongwith others. Sh. Sandeep Kumar and Sh. Deepak Jugran, Stenographers, who were appointed by the Institute on regular basis duly funded by Dr. P.N. Chuttani Charitable Centre were placed in the combined seniority list/gradation list of Stenographers along with the applicant and other stenographers of the Institute. The applicant never objected to the same.

► 5. On 04.6.2011 the Institute notified the posts of Personal Assistants to be filled from amongst stenographers of the Institute. Applications were received and shorthand test was conducted for recruitment to the 19 posts of Personal Assistant (8 posts) for promotion and (11 posts) under Limited Departmental Competitive Examination

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quota on 16.11.2011 and 17.11.2011. The examination was conducted as per provision of the Recruitment Rules. As per results declared on 09.12.2011, the successful candidates who had qualified the shorthand test under Promotion Quota were given appointment to the post of Personal Assistant vide office order dated 16.12.2011 including Sh. Jitender Kumar. The successful candidates who qualified the test under Promotion Quota and were given appointment to the post of Personal Assistant vide order dated 16.12.2011 are as under:

1. Parveen Kumar
2. Anu Monga
3. Sanjay Kumar S/o Sh. Raj Kumar
4. Deepak Mehta
5. Jitender Kumar (SC)

For 11 (UR-08, SC-02 and ST-01) posts of Personal Assistant under the Limited Departmental Examination Quota, shorthand test of Stenographers who had completed 3 years of regular service in the grade and had applied for LDCE, was conducted on 17.11.2011 at a speed of 120 w.p.m. The successful candidates who had qualified the shorthand test under Limited Departmental Examination Quota were given appointment to the post of Personal Assistant vide office order dated 16.12.2011.

6. After filling the posts of Personal Assistant under Promotion Quota 03 posts (SC-02 and ST-01) and under LDCE quota 05

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posts (UR-02, SC-02 and ST 01) remained vacant. The Institute has been maintaining the roster for promotion quota and LDCE quota separately. The promotion to the post of Personal Assistant was from two different streams i.e.

- A. 50% posts are to be filled by way of seniority-cum-fitness from amongst the Stenographers with five years of regular service in the Grade who qualify a departmental test in shorthand at a speed of 100 words per minute in Stenography (English/Hindi).
- B. 50% from amongst the Stenographers with three years of regular service in the Grade who can qualify the test in shorthand at a speed of 120 w.p.m. for seven minutes in order of merit, based on the total marks obtained in the test for the qualification and for ACRs.

For the two streams there is a separate DPC for promotion from each stream and the method of selection of each stream is also different. In such cases the principle of rotation of vacancies between different streams for the purpose of consolidated seniority list will have to be followed and not General Principle 5(ii) as mentioned in Chapter of Seniority of Swami's Complete Manual on Establishment and Administration. For instance if promotion to a Grade is made 50% from stream (A) and 50% from stream (B) through separate DPCs, vacancies of the promotion quota may be filled in order A1, B1, A2, B2, A3, B3 etc, assuming that A1, A2 and A3 are the candidates included in the select list of stream (A) and B1, B2 and B3 are the candidates included in the select list of stream (B). This clarification has been given under the illustration of General Principle 5(ii).

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If that is so, the Institute will have to prepare two separate lists from Stream (A) and Stream (B) respectively and it would be the discretion of the candidates so selected in both the streams to choose their stream of choice through which they can be placed higher in merit of the consolidated promotion list of both the streams. Moreover, the roster of the promotion quota and Limited Departmental Competitive Quota are being maintained separately so as to ensure 50% strength of Personal Assistant from the two methods of recruitment and the reservation roster. Further, the adhoc service rendered by an official can be considered for grant of pensionary benefit but cannot be considered for seniority and promotion as has been clarified by the Government of India, Department of Personnel & Training OM No.28036/1/2001-Estt.(D) dated 23.07.2001 (Annexure R/1).

7. It has also been stated that after the finalization of the Dr. P.N. Chuttani Charitable Centre, faculty as well as non-faculty posts were notified and the recruitment was made after following due process as is applicable in the case of regular employees of the respondent-Institute. Their seniority was maintained in the regular cadre of the Institute and the seniority list was circulated amongst all the Stenographers vide their office letter No.EII(1)-PGI-2007/F60 dated 6/8.8.2007 (Annexure R-6). At that time the applicant never represented against his placement in the

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seniority list and has now objected to the selection of respondent no.6 to the post of Personal Assistant after about nine years by leveling false and frivolous allegations. So far as the merger of respondent no.6 (Sh. Sandeep Kumar) and respondent no.8 (Sh. Deepak Jugran) is concerned, respondent no.6 joined the Hon'ble Punjab and Haryana High Court as Senior Scale Stenographer on 14.03.2007 for a period of one year with permission to retain lien upto one year from the date of relieving. His lien was extended for another one year vide office order dated 17.01.208. He returned to his original post of Stenographer before expiry of his lien period and joined the post of Stenographer as on 21.02.2009. The Institute while placing the agenda before Governing Body in its meeting held on 03.12.2008 could not include his post as the official joined his post on 21.09.2009 and only respondent no.8 was merged with the existing cadre of stenographer. In view of this, there is no illegality in his candidature as the official has been a regular stenographer of the Institute. It is further stated that two employees who are also impleaded as respondents no.6 and 8 respectively were also appointed as regular employees of the Institute and hence, their seniority was also determined along with the other regular employees of the Institute including the applicant. It was therefore, wrong to suggest that respondent no.6 had no right to be considered for the Departmental Examination process held by the respondent Institute. It is also mentioned that respondent no.6 has

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never worked in the Dr. P.N. Chuttani Charitable Centre and has always been posted at various other Departments of the Institute.

8. Written statement has also been filed on behalf of respondent no.6 wherein it has been stated that answering respondent was appointed in 2003 and the OA is barred by limitation and also by applicant's own conduct as the applicant did not challenge the appointment of the answering respondent earlier. The applicant was appointed in the Institute on adhoc basis on 15.01.2001 and further his services were regularized w.e.f. 02.11.2002 along with other counterparts. The answering respondent, who was also appointed by the Institute on regular basis duly funded by Dr. P.N. Chuttani Charitable Centre was placed in the combined seniority list/gradation list of Stenographers along with the applicant and other stenographer of the Institute. The applicant never objected to the same. The combined seniority list of the Stenographers is not under challenge. Therefore, the present OA filed by the applicant is liable to be dismissed.

9. Rejoinder has been filed on behalf of the applicant stating that respondent no.6 was appointed in the year 2003, but the seniority list (Annexure R-6) of all the employees were prepared in the year 2007 and the applicant was shown to be at Sr. No.81 and respondent no.6 was much junior to the applicant who was shown to be at Sr. No.88 and there

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was no ground to challenge the seniority of respondent no.6 as he was already shown junior to the applicant. Respondent no.6 was wrongly and illegally placed in the seniority list of stenographers of the Institute at Sr. No.88 whereas no agenda regarding merger of his post within the Institute was passed at the time of preparation of seniority list. The Institute had merged the posts of the various faculty and staff of Dr. P.N. Chuttani Charitable Centre on 10.01.2009 much later than the date of issuance of seniority list of stenographers. As far as dates of appointment and regularization is concerned there is no dispute and the respondents have fairly admitted that respondent no.6 and 8 were appointed in Dr. P.N. Chuttani Charitable Centre and seniority and other benefits with regard to the service was to be governed by the Dr. P.N. Chuttani Charitable Centre unless their posts were merged by a specific order passed by the Institute. But in the present case, no specific order has been passed before preparing the seniority list dated 08.08.2007 (Annexure R-6). As per Agenda dated 10.01.2009 only one post of stenographer was merged but the post on which the respondent no.6 is working had not been merged till date, therefore, respondent no.6 is not entitled for seniority and other benefits of the Institute, when he was not even born in the cadre so far. Ab _____

10. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant reiterated the content of the OA and the rejoinder. He asserted that since the applicant had longer service as Stenographer, his seniority in the list of Personal Assistants should reflect this. He also stated that the private respondents who were appointed in Dr. P.N. Chuttani Charitable Centre could not be treated as employees of PGIMER and hence were not eligible to appear for LDCE for promotion as Personal Assistant.

11. Learned counsel for respondents no.1 to 5 stated that

- there were two streams for promotion and appointment as Personal Assistant. The applicant had opted for Seniority-cum-Merit stream while the private respondents were from the LDCE stream. Learned counsel stated that the inter-se seniority had to be determined keeping in view 50:50 ratio for both the streams and hence persons selected on the basis of Seniority-cum-Merit and those selected through the LDCE were given alternate positions in the Seniority List which commenced with the senior most person promoted on Seniority-cum-Merit. In view of this, the applicant who was at Sr. No.5 in the list of persons promoted on the basis of Seniority-cum-Merit got lower position while private respondents who had merit positions 1st, 2nd and 4th in the LDCE stream got higher positions in the Combined Seniority List. Learned counsel also stated that it was a

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policy decision of the Governing Body that persons working in the Dr. P.N. Chuttani Charitable Centre were to be appointed on the same terms and conditions as in the PGIMER and were to be shown in the Seniority List of the Institute and hence there was no irregularity in the private respondents having ~~been~~ participated in the LDCE and having been promoted as Personal Assistants.

12. We have given our careful consideration to the matter.

Learned counsel for the applicant has mainly relied on the fact that the applicant was appointed as Stenographer in the PGIMER in 2001 and was

regularized in service in 2002 while the private respondents were appointed in Dr. P.N. Chuttani Charitable Centre later. However, it is clear from the Rules that there being two streams for promotion/appointment as Personal Assistant, the Stenographers of PGIMER could opt for selection on seniority-cum-merit basis or through the LDCE provided they had the necessary qualifying service and they could clear the shorthand ~~test~~.

The applicant as well as private respondents cleared the qualifying test.

While the applicant opted to be promoted through the Seniority-cum-Merit stream, the private respondents opted for LDCE route. Learned counsel for the applicant has not been able to point out to any rule/guidelines for determining inter-se seniority of persons who are appointed to a post from the different streams. Since the seniority-cum-Merit stream and the LDCE

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stream both had 50% share in the promotion to the posts of Personal Assistant, the methodology adopted by PGIMER appears to be quite reasonable. Hence there being no merit in the O.A. the same is rejected.

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

Ms
(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.

Dated: 24.3.2015

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