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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CIRCUIT SITTING AT JAMMU.**

O.A.No.060/00648/2014

Date of Decision : 20.5.2015

Reserved on : 14.05.2015

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

Suresh Sharma son of late Sh. Ishwar Dutt Sharma, aged 35 years, presently working as Hospital Attendant, PGIMER, permanent resident of H.No.3080, Sector 24/D, Chandigarh.

Applicant

Versus

1. Post Graduate Institute of Medical Education and Research, Sector 12, Chandigarh through its Director.
2. Deputy Director (Administration), PGIMER, Sector 12, Chandigarh.
3. Administrative Officer, Recruitment Cell, PGIMER, Sector 12, Chandigarh.

.... Respondents

Present: Mr. H.S.Saini, counsel for the applicant

Mr. K.B.Sharma, proxy for Mr. D.R.Sharma, 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 the following relief:-

"8 (ii) the impugned selection / short list order dated 02.07.2014 (Annexure A-1) may be quashed whereby the respondents have selected / short listed the candidates by conducting a common written examination for both posts of LDCs/Stenographers to be filled by way of direct recruitment and declared them eligible for next stage of selection after scrutiny of their eligibility, illegally, arbitrarily, non-transparent and unfair manner and in violation of the criteria prescribed in the advertisement and while ignoring the instructions dated 16.02.1988, 06.01.1976, 21.05.1987 and 27.06.1989

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(Annexure A-2 Colly.) issued by the Govt. of India, Ministry of Home Affairs (Dept. of Official Language) which mandates to conduct the examination in Hindi option as well for recruitment of posts in Central Govt. Offices and undertakings owned and controlled by the Central Govt.

(iii) consequently, the respondents may be directed to conduct the separate written examination afresh in consonance with the instructions Annexure A-2 Colly. Which provide of conducting the examination in Hindi as an optional language as compulsory for both the posts of LDCs/Stenographers and accordingly make fresh selection of the posts of LDCs and Stenographers separately in accordance with law."

2. Averment has been made in the OA that the applicant is working as Office Attendant in PGIMER on regular basis since 1987. The respondent Institute issued an advertisement dated 26.10.2013 inviting applications for filling 63 posts of LDCs and 13 posts of Stenographers against the direct recruitment quota. The last date for filling on line applications was 11.12.2013. Later vide corrigendum dated 11.12.2013, the respondents increased the number of posts of LDCs from 63 to 71 and for the post of Stenographers from 13 to 15 and the last date was extended upto 13.01.2014. The applicant submitted on line application dated 06.11.2013 for the post of LDC well before the cut off date and deposited the requisite fee. A true copy of the application generated is annexed as Annexure A-7.

3. Notice dated 29.04.2014 (Annexure A-8) was issued by the respondents regarding list of eligible candidates, syllabus of examination posted on the website of the Institute for conducting the written examination for the posts of LDCs and Stenographers on 30.06.2014. U —

4. Averment has been made in the OA that since the applicant had opted for Hindi as the Language in the written examination in the proforma filled by him, therefore, he prepared for the written examination in Hindi language and was never intimated by the respondents that the written examination would be conducted only in English. The respondents issued admit card to the applicant vide copy at Annexure A-9. When he appeared in the written examination on 30.06.2014, he was surprised to see that question paper was available only in English language despite the fact that he had opted for Hindi language as the medium of his examination. He asked the Centre Head to supply him the paper in Hindi, the Centre Head showed inability to do so and stated that the applicant narrate his grievance before the PGIMER authorities. The applicant then submitted representations dated 02.07.2014 (Annexure -10 Colly.) to respondent no.1 as well as Hindi Language Officer, PGIMER raising his objection for non-conducting of written examination in Hindi language but without any result.

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

- i) There are mandatory instructions of Govt. of India, Ministry of Home Affairs (Department of Official Language) which mandates conduct of the examination in Hindi option for recruitment to posts in Central Govt. Offices and undertakings owned and controlled by the Central Govt. The examinations are to be conducted in Hindi also.
- ii) The applicant in his on line application opted for Hindi as a medium of examination, but he was not provided the question paper in Hindi.
- iii) As per 'General Instructions' in the advertisement, the respondents had prescribed 40% and 35% marks as qualifying marks as General and SC/ST/OBC category respectively and all candidates secured these qualifying marks should have been declared eligible for next

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stage of selection. Also it was stipulated in these instructions that the candidates would be short listed for scrutiny in the ratio of 1:10 in the advertised vacancies but higher number of candidates had been called as per the following statement:-

No. of Posts	Category	No. of short listed candidates
36	General	362
10	SC	100
05	ST	51
18	OBC	183
02	PH	15
Total:71		

iv) Vide advertisement dated 26.10.2013 (Annexure A-4), the respondents have proposed to fill two different posts of LDCs and Stenographers and the candidates who were desirous to apply for both the posts, separate on line applications were called for and they were required to pay Rs.2000 as application fee (Rs.1000 for each post). When, there were two distinct posts advertised by the respondents and the respondents have received separate application fee from the candidates, therefore, the selection / short listing of the posts of Stenographers should have been made only amongst the candidates who had applied for the post but surprisingly, the respondents conducted a common examination for both the posts on 30.06.2014 which is illegal and arbitrary. Because of conducting one examination for both the posts the respondents have seriously prejudiced the right of the candidates like applicant for the simple reason that otherwise the candidate has to compete with the candidates on his own post of LDC / stenographers, as the case may be, whereas he was made to compete with all the candidates who have applied for both the posts.

v) Sh. P.C. Akela, Registrar (Academic) was Controller of the entire process of holding the written examination while his daughter Ms. Anchal Akela, was appearing in the selection for the post of LDC and hence Sh. P.C. Akela, should not have acted as the Controller of Examinations for selection of the posts of LDC while his daughter had been placed at Sl.No.1 of the selected / short listed candidates which raised doubt about the transparency and fairness of the impugned selection made by the respondents.

Hence this OA.

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6. In the written statement filed on behalf of the respondents, the facts of the matter have not been disputed. It has further been stated that the applications were invited for filling LDCs and Stenographers vide advertisement dated 26.10.2013 and the applicant had applied vide his application annexed as Annexure A-7. However, reference has been made by the applicant in the O.A. to the application form which was meant for recruitment for the post of Sister Grade II / Technician advertised in the year 2014. In the application form of the applicant (Annexure A-7), there was no mention of the applicant having been opted for Hindi as the medium of examination, nor was the medium of examination written on the Admit card, and the applicant did not seek any clarification from the answering respondents regarding medium of written examination. The applicant cannot claim as a matter of right that he must be permitted to take examination in the Hindi medium. It has also been stated that the result of short listed candidates was declared on 02.07.2014 and fresh applications were invited from the short listed candidates for participating in the 3rd stage of the selection process for appearing in the skill test for the posts of LDC as well as Stenographer.

7. Regarding the involvement of Sh. P.C. Akela, Registrar (Academic) Section, it has been stated that the Registrar only provides logistic support for conducting the written examination for various posts advertised by the Institute including that of LDCs and Stenographers. Question papers, OMR sheets, results etc of the written examination are prepared by the Examination Cell of the

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Institute under the supervision of Professor Incharge Examination Cell. Besides, the Registrar had himself disassociated from this examination and the duties of the Registrar were assigned to Dr. K. Gauba, Professor Incharge Academic Section of the Institute (Annexure R-1). Moreover, Ms. Anchal Akela, D/o Sh.P.C. Akela was placed at Sl.No.44 of the short listed candidates for SC category in the OA. It has also been stated that a certificate for opening of question papers at the Institute was obtained from the Centre Superintendent to the effect that the question papers in the examination centre have been received in a sealed box and the same are opened in their presence on 30.06.2014 at 9.45 AM. This certificate was also signed by one representative of the Institute and was witnessed by two invigilators. This is a standard practice which is followed by the Institute for all the examinations being conducted by the Institute. A copy of one such certificate is annexed as Annexure R-2. It is denied that the question papers were already opened as alleged by the applicant.

8. Arguments advanced by the learned counsel for the parties were heard, when learned counsel for the applicant pressed the facts and grounds taken in the OA and the rejoinder.

9. Learned counsel for the respondents took the preliminary objection that the persons short listed for the written examination had not been made respondents in the OA and hence the OA was barred on account of non-joinder of necessary parties. He further stated that the examination had been held in accordance with the notice for the examination issued on 29.04.2014 and the

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applicant having participated in the examination was now estopped from challenging the procedure for the same. In this regard, he cited "Ranjan Kumar Vs. State of Bihar and Ors." in Civil Appeal No.4455-4458 & Other CAs, decided on 16.04.2014, wherein it had been held as follows:-

- "A. Constitution of India, Article 16 –Appointments challenged by unsuccessful candidates – Appointments quashed without making appointees party – Writ Petition defective – No relief could be granted to writ petitioners.
- B. Constitution of India, Article 16 – Appointments in pursuance to advertisement – Appointments challenged by unsuccessful candidates on ground that procedure for appointment was vitiated – held, when the respondents had appeared in the interview knowing fully well the process, they could not have resiled later on or take a somersault saying that the procedure as adopted by the department was vitiated."

10. We have given our thoughtful consideration to the matter, keeping in view the pleadings of the parties and the arguments advanced by the learned counsel. From a copy of the application form of the applicant appended as Annexure A-7, it is clear that there is no mention in this regarding the medium of the examination and hence the applicant's claim that he had opted for Hindi as the medium of examination is not borne out. The notice regarding the written examination to be held on 30.06.2014 was issued two months earlier on 29.04.2014 and any doubts that the applicant had in this regard could have been resolved by him before the date scheduled for the examination. As per the syllabus indicated in the notice dated 29.04.2014, knowledge of English (12th Standard) and Hindi (Matric Standard) was required and since a multiple choice objective type test was being held in the matter, the applicant should not have

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had any difficult in dealing with the question paper even if the same was in English. The respondent Institute being an autonomous organization that was recruiting persons for the posts of LDCs and Stenographers could devise its own method of selection keeping in view its needs regarding skills required for the posts proposed to be filled, and having participated in the selection process, the applicant who is an unsuccessful candidate is estopped from challenging the same. Hence there being no merit in the OA, the same is rejected. No costs.

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(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

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

Place: CHANDIGARH
Dated: 20 - 5 - 2015 .

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