

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 30.01.2018

ORIGINAL APPLICATION NO. 060/00159/2016

Chandigarh, this the 12th day of March, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

1. Vijay Kumar, Belt NO. 630, son of Sh. Ram Prakash, r/o 168/3-B, Manimajra, U.T. Chandigarh.
2. Balkar Singh, Belt NO. 130, son of Mewa Singh, H. NO. 143, Police Station Complex, Sector 26, Chandigarh.
3. Pawan Kumar, Belt NO. 157, son of Sh. Bhagwan Singh, # 287-A. Police Line, Sector 26, Chandigarh.
4. Ajesh Kumar, Belt NO. 217, son of Sh. Ram Kishan, H. NO. 17-B, Back Side, Police Station, Sector 34, Chandigarh.
5. Raj Kumar, Belt NO. 316, son of Sh. Dilbagh Singh, H. NO. 787, Milk Colony, Dhanas, U.T. Chandigarh (All Group- C)

....APPLICANTS

(Argued by: Shri Sunil K. Nehra , Advocate)

VERSUS

1. Union Territory Chandigarh, through its Administrator.
2. Inspector, General of Police, Union Territory, Chandigarh.
3. Senior Superintendent of Police, U.T. Chandigarh.

....RESPONDENTS

(By Advocate: Shri Sanjay K. Guavera)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

Five applicants have jointly filed the present Original Application, (O.A.) wherein they assailed an order dated 9.10.2015,

whereby the persons junior to them have been promoted to the rank of Senior Constable and they have been ignored.

2. The facts, which led to filing of the present O.A., are that in pursuance of an advertisement, issued by Police department of the Chandigarh Administration, in the month of March, 1994, the applicants put in a plea for their candidature. Though they made grade at the selection process, their appointments came to be denied to them, on the basis of an interim order dated 24.8.1994, passed by this Tribunal in five successive petitions filed by un-successive candidates. Subsequently, on 10.2.1995 earlier interim order, was modified and all other candidates, whose selection was not under challenge in the above noted O.As, were allowed to join their duties. Accordingly, the candidates were allowed to join. The above noted O.As came to be disposed of on 16.1.1997, on a compromise arrived between the parties. As a result of which, the applicants and other candidates whose appointment was stayed were allowed to join in the year 1997. It is the case of the applicants that when 22.9.2015, the respondents circulates the list of those candidates who were to be considered for promotion to the post of Senior Constable, but their names could not find mention therein. A report was also called from the quarter concerned with regard to their conduct for the period 1.4.2015 to 30.6.2015. At that time, the applicants came to know that they were not assigned seniority w.e.f. date which came to be granted to 1995 batch-mates of them. They were granted seniority from the

date, when they join after the disposal of O.A. i.e. from 1997, and persons who were selected, as a result of subsequent selection, which took place in 1996, they were also declared senior to them. Based upon seniority, the respondents have passed impugned order promoting persons junior to them to the post of Senior Constable. Hence the instant O.A.

3. While resisting the claim of the applicants, the respondents have submitted that though the applicants were offered appointment as a result of their selection in pursuance to 1994 advertisement, but since they join Constables as on 29.4.1997 accordingly their seniority was fixed from the date of entry into service. It is further submitted that they cannot be given seniority from the date when it came to be granted to 1994 batch mates. It has also been clarified therein that since their appointment is as a result of consented order, which was passed while disposing O.As, therefore, the applicants cannot be turned down and challenge the validity of order dated 16.1.1997. Therefore, it is prayed that the O.A. be dismissed.

4. We have heard the learned counsel for the respective parties and perused the material on record.

5. Shri Nehra, learned counsel appearing on behalf of applicants vehemently argued that action of the respondents in not giving them seniority with their batch-mates i.e. from 1994 and fixing their seniority from the date when they joined is totally illegal and arbitrary. To substantiate his plea, he submitted that due to fault of respondents the applicants cannot be made to suffer as they were selected and because of stay granted by this Tribunal they

could not join earlier and subsequently when they join they cannot be put to loss of their seniority alongwith their batch mates i.e. from 1995 onwards. Thus, it is prayed that the impugned promotion order of the persons junior to the applicants to the post of Senior Constables be quashed and set aside and direction be issued to the respondents to give them seniority below the incumbents of 1994 batch and above the candidates of 1996 batch and to consider their claim for promotion to the post of Senior Constables.

6. Per contra, Shri Guavera, learned counsel for respondents vehemently opposed the prayer and submitted that once their appointment has been made by way of consent order granted by this Tribunal, then applicants cannot be allowed to retract from their consent. He submitted that it is recorded in the order dated 16.1.1997 by this Tribunal while disposing of 5 O.As that the applicants shall be given appointment as Constable with immediate effect and they will not claim inter-se-seniority with their batch mates or any other consequential benefits prior to their appointment and be given seniority from the date when they were inducted and appointed in service. It is, however, urged that as per rule formation seniority has to be fixed from the date of entry into service. Since, the applicants have joined service in the year 1997, therefore, their seniority has been rightly fixed from the date of entry into service from the year 1997.

7. We have given our thoughtful consideration to the entire matter.

8. The core question that arose for our consideration that whether the applicants can be given seniority from the date from which it was came to be granted to 1994 batch-mates of them or on the date when they actually join the department i.e. 24.1.1997.

9. Conjunctive perusal of pleadings makes it clear that the applicants were selected as a result of an advertisement which was issued in the month of March, 1994. They were not offered appointments due to restrained order passed by this Tribunal on a petition challenging the selection. The other candidates against there was no restrained order were allowed to join in 1994 itself, but the applicants were allowed to join after disposal of O.As on 16.1.1997. Perusal of an order dated 16.1.1997, makes it clear that the O.As were disposed of by way of a consent where the applicants have given no objection that they are offered appointment of Constable with immediate effect below of those candidates who have already enrolled and appointed till date. The relevant paras of the orders reads as under:-

“ After hearing the learned counsel for all parties concerned, all of them agreed for the disposal of these five O.As bearing NO. O.A. 783/HR/94, OA 827/HR/94, OA 868/HR/94, OA 892/HR/94, AND OA 993/HR/93 by a common order by way of consent in the terms that the applicants have no objection in case they are offered the appointments of Constables in Union Territory, Chandigarh with immediate effect, below all those constables who have already been enrolled and appointed till date, and that the applicants will not claim any seniority or any other consequential benefits prior to their date of appointment as Constables in Union Territory, Chandigarh.

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5. In the result we disposed of OA Nos. 783/HR/94, 827/HR/94, OA 868/HR/94, OA 892/HR/94, and 993/HR/93, in the terms that the applicants shall be given appointment as Constables in the U.T.

Chandigarh, but they will be placed according to their merit inter se below all those Constables who have been inducted and appointed till date. Respondents No. 3 & 4 are directed to comply with the orders in these O.As within three months from the date of receipt of copy of this order. This order has been dictated and pronounced in the presence of Ld. Counsel for all the parties in these O.As.”

10. Perusal of the above extracted paras of the orders of this Court makes it clear that after recording a consent this Court directed the respondents to offer them appointment conditionally that they will be placed according to their merit-inter-see below all those candidates who have been inducted and appointed till date and they will not claim seniority or any other consequential benefit prior to date of their appointment as Constable in the U.T. Chandigarh. Thus we do not find fault with the respondents for giving them seniority from the date when they join the Chandigarh Police as Constables. The judgment relied upon by the applicants in O.A. No. 1308/CH/2011- Azad Singh Vs. Chandigarh Administration & Another is on other plea thus it does not render any assistance to the applicants. Accordingly, we find no reason to interfere with the impugned orders. The O.A. is therefore, dismissed being devoid of merit. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 12.03.2018

