

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/00249/2016 Date of order:- July 10 , 2018.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

Anita w/o Harish Kumar, Govt. Model High School, Mani Majra (U.T.), Chandigarh, presently working as Clerk, O/o the Director Higher Education (Account Branch) Sector 9, Chandigarh.

.....Applicant.

(By Advocate :- Mr. R.K.Sharma)

Versus

1. Union Territory, Chandigarh through its Administrator, U.T.Civil Secretariat, Sector 9, Chandigarh.
2. Secretary Education, U.T. Chandigarh Administration, Sector 9, Chandigarh.
3. Director School Education, Chandigarh Administration, Sector 9, Chandigarh.

...Respondents

(By Advocate : Shri Sanjay Guevera, for Mr. Arvind Moudgil).

ORDER

Sanjeev Kaushik, Member (J):

By means of present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, applicant seeks the following relief(s):-

"i) Quash decision of the respondents as conveyed vide memo NO.1973-DSE-S2-11(33) 2012 dated 29.2.2016, copy attached as Annexure A-1, whereby claim of the applicant for promotion against 1% quota has been declined on the ground that number of technical issues

were involved (such as distribution of posts amongst SLA/Ministerial staff, intra-seniority etc.) and that in order to set out a specific promotion criteria against SLA/Ministerial staff the department had constituted a Committee of officers vide order NO.SPI-UT-S2-1Q1 (233) 2012 dated 1.1.206, which in turn, has also submitted its report on 4.2.2016 according to which promotion quota against 1% of sanctioned for SLA/ministerial staff has been worked out which comes to 4.91 (say 5 posts) and the proposal for filling up these posts from amongst SLA/Ministerial staff in the ratio of 1:3 by giving due weightage to seniority to the concerned cadre, has now been initiated by the department, as claim of the applicant is required to be considered w.e.f. 24.11.2014 in view of the policy framed and circulated by the department vide letter No.DPI-UT-S2-11(39)-92 dated 18.6.2009 issued by the DPI (s) Chandigarh Administration on the basis of notification NO.3888-DPI-UT-S1-11(12) 95 dated 10.3.2009 issued by the Chandigarh Administration Education department and quashing thereof;

ii) Directions may be issued to the respondents to consider and promote the applicant to the post of Science Medical Mistress w.e.f. 24.11.2014 in view of the policy framed and circulated by the department vide letter NO.DPI-UT-S2-11(39)-92 dated 18.6.2009 issued by the DPI(S) Chandigarh Administration on the basis of notification NO.3888-DPI-UT-S1-11(12) 95 dated 10.3.2009 issued by the Chandigarh Administration Education Department”.

2. Facts of the case are that the applicant who possesses B.Sc, B.Ed.(with relevant subject combination) M.Sc. & M.Phil(Computer Science) was appointed as clerk in the respondent department vide order dated 13.6.2005. Chandigarh Administration vide its notification dated 10.3.2009 made amendment in Chandigarh Education Service (School Cadre) (Group C) Recruitment Rules, 1991 and made provision for promotion for Masters/Mistress amongst JBT Teachers, Nursery teacher, C&V Teachers (drawing teacher), PTI and Work Experience Instructors etc. and Sr. Lab. Attendants/Ministerial staff in the ratio of 70:15:14:1 respectively. Applicant has stated that in pursuance of notification dated 10.3.2009, respondents considered the case for promotion as Language Master Hindi, Punjab

& Sanskrit from amongst NTT/C&V (Drawing, PTI & Work experience in cutting & Tailoring etc.) from amongst Las and other ministerial staff. Respondent no.3 vide letter dated 18.6.2009 decided to fill one post of Medical Master and two posts of Social Study by way of promotion amongst from SLAs/ministerial staff. Respondents asked for cases of eligible persons from the feeder cadre of C&V, ministerial staff and SEA to Master/Mistresses. Applicant being the only eligible candidate against 1% quota out of ministerial category/SLA, applied for the post of Science Medical Mistress. A joint/combined list of ministerial staff was uploaded on the website , wherein the present applicant was declared as eligible for promotion to the post of Science Medical Mistress. Thereafter, the applicant made representation dated 23.9.2014 for consider and promote her to the post of Science Mistress in view of departmental circular dated 18.6.2009. Respondents considered the cases of eligible JBT, C&V (Drawing, PTI & Work Experience Instructors) on 24.11.2014, but the case of the ministerial staff including the case of the present applicant was not considered. Applicant served a legal notice dated 3.11.2015 to which the respondents sent reply wherein the respondents have stated that promotion of SLA/ministerial staff against 1% quota could not be done in the promotion process initiated during the year 2014-15 as number of technical issues were involved. In the reply, the respondents have further stated that a committee of officers was constituted for the purpose, wherein the Committee recommended that quota against 1% of sanctioned for MLA/ministerial staff has been worked out which comes to 4.91 (say 5 posts) and the proposal for filling up these posts from amongst SLA/ministerial staff in the ratio of 1: 3 by giving due weightage to

seniority to the concerned cadre has now been initiated by the department.

3. Applicant has alleged that the respondents wanted to favour someone by not considering the claim of the applicant for promotion. Applicant has stated that it is settled principle of law that once a right has accrued to the employee, the respondent department cannot snatch the same in any manner. Hence the present OA.

4. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement, wherein they have stated that the Chandigarh Administration have notified its own Recruitment Rules known as Chandigarh Education Service (School cadre) (Group C) Recruitment Rules, 1991, whereby recruitment of masters/mistresses were made as 60% by direct recruitment, 20% by promotion from amongst PST and 20% by deputation. Thereafter, Rules, 1991 were amended in the year 1998 and again Rules were further amended in the year 2009. Till 2009, there was no provision for promotion of SLA/ministerial staff as master/mistress as ministerial staff have separate avenues of promotion to the post of Sr. Assistant/Superintendent/Administrative Officer/Registrar. It was for the first time in March, 2009, ministerial staff has also been made eligible for promotion in the cadre of masters/mistresses also besides their separate line of promotion by reducing 1% quota of C&V teachers. The ratio out of 20% quota meant for promotion of four feeding cadres i.e. JBT, Nursery and C&V is only 1% from 2009 and which is further divided amongst SLAs and ministerial cadre on the

basis of their actual strength. The posts of masters/mistresses are to be filled by non-selection method i.e. strictly in order of their seniority in their own cadre and subject to availability of vacancies. They have thus prayed for dismissal of the OA.

5. As per direction dated 21.12.2016 of this Court, respondent no.2 has filed affidavit , wherein it was specifically mentioned that there is no letter dated 9.6.2009, rather, the same is the copy of the note submitted by dealing assistant. On the basis of note, Superintendent of office of respondent no.3 proposed that DEO Chandigarh may be asked to send the promotion cases complete in all respects. In the said affidavit, respondent no.2 has also stated that since the promotion was based from multiple cadres i.e. JBT/NTT/C&V and SLA/ministerial cadre, as such, roster points were fixed according to the ratio mentioned in the Recruitment Rules for these 4 cadres (70:15:14:1). Promotions were made from these 4 cadres in 12 different subjects of TGT on the basis of roster point fixed for different cadres to ensure that there is no injustice to the employees of any specific cadre. Further 1% post was to be filled up from SLA/ministerial cadre and both these cadres i.e. SLA and ministerial cadre are having different seniority list. Before making promotion under 1% quota, it was decided on the basis of cadre strength of LS and ministerial staff that post among these 2 cadres are to be filled up in the ratio of 1:3. Applicant's name is at sr.no.9 in the seniority amongst the ministerial cadre and Mr. Gurjant Singh whose name is at sr.no.7 in the ministerial cadre was promoted. No other candidate from ministerial cadre after 27.2.1996 was promoted

and on the other hand, applicant's date of joining in the department is 13.6.2005.

6. Applicant has also filed rebuttal to the affidavit that Chandigarh Administration vide notification dated 10.3.2009 (Annexure A-4) had made provision to fill up the posts of TGT by way of promotions amongst JBT Teachers, Nursery Teachers, C&V Teachers (Drawing Teachers, PTI and Work Experience Instructors etc.) and SLA/Ministerial staff, in the ratio of 70:15:14:1 AS per office noting dated 9.6.2009 (A-5) then DPI had approved proposal to fill up various posts in above proportion. He has given vacancy position in a tabulated form. The applicant applied for and is only eligible candidate from amongst SLAs/Ministerial staff fulfilling the eligibility for the post of Science medical Master/Mistress. Five posts were to be filled up and four have already been promoted from amongst Ministerial Staff/SLA. On the one hand the respondents claim that post has been kept for promotion of Mr. Damodar and on the other hand, they have refused to promote him and applicant is eligible for promotion as post of Science Medical Mistress is lying vacant since 2009.

7. We have heard the learned counsel for the parties at length and gone through the file minutely.

8. When the case came up for hearing on 21.12.2016, learned counsel for the applicant made a specific plea that in terms of letter dated 9.6.2009 (Annexure A-5), all other eligible persons, except the applicant, have already been promoted and only applicant

has been left out. On this, the learned counsel for respondents stated that respondents have taken a conscious decision in meeting held on 10.7.2016, to fill up 4 posts in the ratio of 1:3 from amongst SLA/Ministerial cadre. However, qua promotion in pursuance of letter dated 9.6.2009, he sought time to clarify the matter. On 28.9.2017, the learned counsel for the respondents, during course of hearing, went to the extent of challenging the validity of Annexure A-5, claiming that proposal was never approved by DPI as there is no specific sentence to indicate that it was approved. So, it was directed that DPI would come present in Court to explain the things. DPI (S) appeared on 9.10.2017 and sought time to file a comprehensive affidavit stating as to why administration has not considered the claim of the applicant as well as other eligible persons for promotion, though people from other categories have been promoted in the year 2009. An affidavit was filed by the respondents pleading that Annexure A-5, was only a noting and that no promotions were made on the basis of this document.

9. However, one thing which goes without any dispute is that the vacancies were available in 2009 and the applicant was eligible at that time and new criteria has been formed by them, qua distribution of vacancies, only in 2016. We find merit in the claim of the applicant that her claim for promotion is required to be considered w.e.f. 24.11.2014 in view of the policy framed and circulated on 18.6.2009 (Annexure A-6), which is further based on noting dated 10.3.2009, which cannot be disowned by them in view of issuance of a formal order, Annexure A-6. The applications were invited and the applicant had submitted her application in 2009 itself. The persons from other categories were admittedly promoted from

2009 itself. That being the position, there was no bar in considering the claim of the applicant from 2014 itself when she was duly eligible and had submitted her application and vacancies were admittedly available at that moment. The delay caused by the respondents and then change of criteria in 2016, cannot be used by them to their own advantage and to the prejudice of the applicant as it would amount to snatching the right of applicant for consideration for promotion to the post in question, more so, in view of law laid down by the Hon'ble supreme Court in the case of **UNION OF INDIA & OTHERS VS. HEMRAJ SINGH CHAUHAN & OTHERS**, 2010(3) SCALE 272. In any case, the right which had vested in the applicant prior to 2014, cannot be taken away by framing criteria subsequently. We are fortified in our view on the basis of decision in the case of **B.L.GUPTA AND ANOTHER V. M.C.D.** (1998 (9) SCC 223), in which the main issue was whether the vacancies, which had arisen prior to amendment of the Rules, could only be filled as per the Rules as they stood prior to amendment. Dealing with the case, Hon'ble Supreme Court inter alia held as under:

"When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr. Mehta to a decision of this Court in the case of N.T. Devin Katti v. Karnataka Public Service Commission. In that case after referring to the earlier decisions in the cases of Y.V. Rangaiah v. J. Sreenivasa Rao, P. Ganeshwar Rao v. State of A.P. and A.A. Calton v. Director of Education, it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only restricted to 79 and not 171 vacancies, which admittedly existed. This being the correct legal position, the

High Court ought to have directed the respondent to declare the results for 171 posts of Assistant Accountants and not 79 which it had done.”

6. Applicant has also filed rebuttal to the affidavit that Chandigarh Administration vide notification dated 10.3.2009 (Annexure A-4) had made provision to fill up the posts of TGT by way of promotions amongst JBT Teachers, Nursery Teachers, C&V Teachers (Drawing Teachers, PTI and Work Experience Instructors etc.) and SLA/Ministerial staff, in the ratio of 70:15:14:1 AS per office noting dated 9.6.2009 (A-5) then DPI had approved proposal to fill up various posts in above proportion. He has given vacancy position in a tabulated form. The applicant applied for and is only eligible candidate from amongst SLAs/Ministerial staff fulfilling the eligibility for the post of Science medical Master/Mistress. Five posts were to be filled up and four have already been promoted from amongst Ministerial Staff/SLA. On the one hand the respondents claim that post has been kept for promotion of Mr. Damodar and on the other hand, they have refused to promote him and applicant is eligible for promotion as post of Science Medical Mistress is lying vacant since 2009.

7. We have heard the learned counsel for the parties at length and gone through the file minutely.

8. When the case came up for hearing on 21.12.2016, learned counsel for the applicant made a specific plea that in terms of letter dated 9.6.2009 (Annexure A-5), all other eligible persons, except the applicant, have already been promoted and only applicant has been left out. On this, the learned counsel for respondents

stated that respondents have taken a conscious decision in meeting held on 10.7.2016, to fill up 4 posts in the ratio of 1:3 from amongst SLA/Ministerial cadre. However, qua promotion in pursuance of letter dated 9.6.2009, he sought time to clarify the matter. On 28.9.2017, the learned counsel for the respondents, during course of hearing, went to the extent of challenging the validity of Annexure A-5, claiming that proposal was never approved by DPI as there is no specific sentence to indicate that it was approved. So, it was directed that DPI would come present in Court to explain the things. DPI (S) appeared on 9.10.2017 and sought time to file a comprehensive affidavit stating as to why administration has not considered the claim of the applicant as well as other eligible persons for promotion, though people from other categories have been promoted in the year 2009. An affidavit was filed by the respondents pleading that Annexure A-5, was only a noting and that no promotions were made on the basis of this document.

9. However, one thing which goes without any dispute is that the vacancies were available in 2009 and the applicant was eligible at that time and new criteria has been formed by them, qua distribution of vacancies, only in 2016. We find merit in the claim of the applicant that her claim for promotion is required to be considered w.e.f. 24.11.2014 in view of the policy framed and circulated on 18.6.2009 (Annexure A-6), which is further based on noting dated 10.3.2009, which cannot be disowned by them in view of issuance of a formal order, Annexure A-6. The applications were invited and the applicant had submitted her application in 2009 itself. The persons from other categories were admittedly promoted from

2009 itself. That being the position, there was no bar in considering the claim of the applicant from 2014 itself when she was duly eligible and had submitted her application and vacancies were admittedly available at that moment. The delay caused by the respondents and then change of criteria in 2016, cannot be used by them to their own advantage and to the prejudice of the applicant as it would amount to snatching the right of applicant for consideration for promotion to the post in question, more so, in view of law laid down by the Hon'ble supreme Court in the case of **UNION OF INDIA & OTHERS VS. HEMRAJ SINGH CHAUHAN & OTHERS**, 2010(3) SCALE 272. In any case, the right which had vested in the applicant prior to 2014, cannot be taken away by framing criteria subsequently. We are fortified in our view on the basis of decision in the case of **B.L.GUPTA AND ANOTHER V. M.C.D.** (1998) 9 SCC 223, in which the main issue was whether the vacancies, which had arisen prior to amendment of the Rules, could only be filled as per the Rules as they stood prior to amendment. Dealing with the case, Hon'ble Supreme Court inter alia held as under:

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High Court ought to have directed the respondent to declare the results for 171 posts of Assistant Accountants and not 79 which it had done.”

10. In view of the aforesaid discussion, this Original Application merits acceptance and is accordingly allowed. The respondents are directed to consider the claim of the applicant for promotion to the post of SMM w.e.f. 24.11.2014, in terms of the policy dated 18.6.2009 (Annexure A-6) based on noting dated 10.3.2009 (Annexure A-5) and if she is found fit, promote her from that date with all the consequential benefits. The needful be done within a period of 3 months from the date of receipt of a certified copy of this order.

11. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P.GOPINATH)
MEMBER (A).

Dated:- July 10, 2018.
Kks

Draft order in O.A.NO. 060/00249/2016 (Anita vs. UOI & Ors.) for kind consideration and concurrence please.

(Sanjeev Kaushik),
MEMBER(J).

Hon'ble Mrs.P.Gopinath,
Member(A).

