

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

...

O. A. No.60/3/2017

M.A. No.60/640/2018

M.A. No.60/1030/2017

**Date of decision: 04.07.2018
(Reserved on: 01.06.2018)**

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

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Jaskirandeep Kaur D/o Sardar Pargat Singh, age 32 years, working as Constable in O/o OSD (Vig.), U.T. Chandigarh, Additional Deluxe Building, Sector-9, Chandigarh.

... APPLICANT

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Home Affairs, North Block, New Delhi.
2. Chandigarh Administration through its Home Secretary, U.T. Secretariat, Sector-9, Chandigarh.
3. Inspector General of Police, Union Territory, Chandigarh Police Headquarters, Additional Deluxe Building, Sector 9-D, Chandigarh.
4. Deputy Inspector General of Police, Union Territory, Chandigarh Police Headquarters, Additional Deluxe Building, Sector 9-D, Chandigarh.
5. Senior Superintendent of Police, Union Territory, Chandigarh Police Headquarters, Additional Deluxe Building, Sector 9-D, Chandigarh.
6. Suresh Kumar S/o Sh. Ramu Ram, No.1296, CHG Working as ASI O/o I.G.P., U.T. Police, Chandigarh.

... RESPONDENTS

PRESENT: Sh. Rohit Seth, counsel for the applicant.
Sh. K. K. Thakur, counsel for respondent no.1.
Sh. Rajesh Punj, counsel for respondents no.2 to 5.
Sh. Rohit Sharma, counsel for respondent No.6.

ORDER

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant is aggrieved by the order dated 26.10.2016 (Annexure A-1), whereby her representation for appointment as

Assistant Sub Inspector (for short 'ASI'), in Chandigarh Police, despite having 59 Marks, and placed at serial no.16, in order of merit, has been rejected on the ground that her claim is to be considered only against post reserved for females and not under General Male as per her own merit. She has also impugned order dated 01.09.2016 (Annexure A-2), whereby official respondents have offered and appointed respondent no.6, who belongs to OBC category, and placed him at serial no.22, and has secured less marks, than the candidate against the post meant for general category, by ignoring the claim of the applicant in violation of Articles 14, 15 (3) and 16 (1) of the Constitution of India. She further seeks direction to the respondents to appoint her as ASI, as per her placement in merit list, from due date when other persons were offered appointment without discriminating her on account of being a woman, not to be appointed against the vacancy of Male General, as per her general merit.

2. The solitary poser, at the hands of the applicant, which is to be answered in this petition, is whether respondents can deny appointment to a female candidate, against general post i.e. General Male or whether action of the respondents in rejecting claim of the applicant for not appointing her despite being high in merit against post reserved for General Male, is in violation of Articles 14, 15 (3) and 16 (1) of Constitution of India.
3. The facts, which led to filing of the Original Application, are that the Chandigarh Administration issued an advertisement dated 18.02.2007 in the news paper, inviting applications for filling up 20

temporary posts of ASI of Chandigarh Police, in the pay scale of Rs.4550-7220, with usual allowances. The breakup of vacancies is as under:-

	General	OBC	SC	Ex-Serviceman	Total
Male	08	04	02	02	16
Female	02	01	01	--	04
Total	10	05	03	02	20

4. The selection was to be made in accordance with the Standing Order No.33/2007 dated 31.01.2007 which lays down elaborate procedure for selection of candidates for the post of ASI. The applicant being eligible and belonging to general category, submitted her application for the post in question. She was subjected to physical measurement and efficiency test during the period 15.05.2007 to 18.05.2007. Thereafter, she was subjected to written test on 23.012.2007. A list of successful candidates, twice the number of advertised vacancies, was called for interview which was held on 21.01.2008 and final merit list was also issued. Due to one reason or the other, the selection could not mature.
5. One Sh. Multan Singh, along with other unsuccessful candidates, approached this Tribunal by filing O.A. No.521/HP/2008, with a prayer that Chandigarh Administration may be restrained from issuing the appointment letters alleging illegality in the written test papers. Simultaneously, on the basis of irregularities alleged in the written test, FIRs were also registered with the Police Station, Sector-3, Chandigarh. Pending Original Application, the competent authority i.e. Inspector General of Police vide decision dated

10.03.2008 scrapped the entire selection and a formal order was issued on 21.04.2008 proposing to hold fresh written test and interview. Considering the decision taken by the competent authority, this Tribunal disposed of the OAs, vide order dated 10.03.2008. Dissatisfied by the decision aforesaid dated 21.04.2008, persons who were in select panel approached this Tribunal by filing various Original Applications, one of which is O.A. No.160/CH/2008, praying therein that the selection should not be cancelled in entirety, and efforts should be made to identify the persons and separate the grain from shaft, without cancelling the entire list. Those OAs were disposed of vide order dated 26.12.2008, with a direction to the Administrator to re-consider the entire matter by passing a reasoned and speaking order. It is, thereafter, the authorities, who were directed to take a decision qua accepting the recommendations made by Inspector General of Police on 21.04.2008 and decided to hold a fresh written test followed by interview after publication. The decision of this Tribunal dated 26.12.2008 was subject matter before Hon'ble High Court of Punjab and Haryana in **Civil Writ Petition No.6340 of 2009** etc. which were disposed of on 08.03.2011 and the order of this Court was set aside with liberty to the Chandigarh Administration to proceed ahead with the fresh selection process as it was not possible to segregate the tainted candidates. It is that decision on the basis of which the Chandigarh Administration re-conducted the written test which was held on 05.06.2011. It was followed by interview held on 16.06.2011 and thereafter final select

list of 20 candidates was displayed in which name of the applicant was at serial no.16 having secured 59 marks. It is the case of the applicant that most of the candidates were issued appointment letters on 25.09.2012.

6. Vide order dated 31.05.2012 (Annexure A-5) candidature of 10 candidates i.e. 7 who fell in the main select list and 3 in the wait list, was cancelled by the Inspector General of Police, on basis of recommendations of the CBI dated 26.03.2012. The aggrieved candidates approached this Tribunal by filing 7 different Original Applications, leading one being O.A. No.745/PB/2012 (**Paramjit Singh vs. Union of India & Others**), which were disposed of on 19.10.2012, with a direction to the respondents to re-visit the entire matter and also afford an opportunity of hearing to the applicants. Subsequently, Senior Superintendent of Police vide orders dated 24.05.2013, again affirmed the cancellation of candidature of 8 candidates out of 10. Another O.A. came to be filed being O.A. No.993/HR/2013 titled **Suresh Pal vs. Chandigarh Administration & Others**, challenging the cancellation of candidature on the basis of CBI Report etc. which was dismissed on 30.09.2014.
7. The applicant submitted her claim for appointment by submitting representation dated 14.09.2016 (Annexure A-6), against action of the respondents in ignoring her claim for appointment though she was placed at serial no.16 with 59 marks and offering appointment to one Sh. Suresh Kumar, who was placed at Sl. No. 18 with 58 marks. Said representation was rejected vide impugned order

dated 26.10.2016 by saying that her claim was to be considered against two general female category posts only and she cannot claim appointment against post reserved for general merit. Thus, applicant has prayed for invalidation of order dated 26.10.2016 (Annexure A-1) and order of appointment in favour of respondent no.6 dated 01.09.2016 (Annexure A-2).

8. The applicant has taken various grounds for invalidation of the impugned order by labeling it as in colourable exercise of power and violative of Articles 14, 15 (3) and 16 (1) of the Constitution of India. The applicant has placed reliance on various judgments indicated as below:-

1. **Neelam Rani vs. State of Punjab and Ors.** with 6 connected cases (2010 (1) SCT 588).
2. **Radhey Shyam Singh vs. Union of India** (Civil Appeal No.4190 of 1995 with Civil Appeal No.5112 of 1995 and Writ Petition No.224/1995 and 395/1995) decided on 09.12.1996.

9. Official respondents have resisted the claim of the applicant by filing detailed written statement wherein they have submitted that this petition deserves to be dismissed on the ground that once applicant has participated in selection process then she cannot turn around and challenge the same. For this, they have relied upon judgments in the cases of **Dr. G. Sarana s. University of Lucknow & Ors.** (1976) 3 SCC 585 and **Madan Lal & Ors. vs. State of J&K & Ors.** 1995 (2) SCC 486.

10. On merit, respondents did not dispute the factual accuracy, as noticed above. However, they submitted that since applicant did not secure higher marks than the candidates, to whom appointment has been offered in her own female category, therefore, she has no case. They have submitted that against vacancies of general male, they have appointed respondent no.6 though he applied under OBC, but as per his general merit. They have submitted that since there are only two vacancies of General Female, against which they have already appointed two persons, therefore, O.A. lacks merit and may be dismissed accordingly.
11. Private respondent no.6 has filed a separate detailed written statement wherein he has taken almost same grounds as has been taken by the official respondents.
12. The applicant has filed replication and has also filed M.A. for placing on record Annexure MA-1 and MA-2, which is information received under RTI. In the application, the applicant apart from contradicting pleas taken in the written statements, has submitted that respondents cannot discriminate against applicant being a woman, by not considering her claim as per her general merit against the post reserved for General Male because otherwise it is in violation of Articles 14, 15 (3) and 16 (1) of the Constitution of India, which prohibits discrimination on the basis of caste, sex and colour. Thus, it is submitted that the impugned order be set aside and direction be issued to respondents to offer her appointment.
13. We have heard learned counsel for respective parties.

14. Sh. Rohit Seth, learned counsel for the applicant vehemently argued that the impugned order, rejecting representation of the applicant, is liable to be set aside because it does not give the reasons for denying the claim of the applicant against the vacancy of general male. To elaborate his argument, he submitted that applicant is placed at Sr. No.16 in order of merit including male and female by securing 59 marks. Instead of offering her appointment against 8th vacancy of General Male, they have offered appointment to a candidate, who is lower in merit and has been placed at Sr. No.22 by securing 57 marks. Thus, it has been submitted that it is clear discrimination and in violation of Articles 14, 15 (3) and 16 (1) of the Constitution of India. Thus, he prayed that the impugned order be set aside. To buttress his plea, Sh. Seth placed reliance on the judgment passed by the jurisdictional High Court on the case of Neelam Rani (supra).
15. Sh. Punj appearing on behalf of the respondents reiterated what has been stated in the written statement. Apart from that, he has placed reliance on the following cases:-
- i. Judgment dated 20.09.2011 in the case of **Naresh Kumar Sharma & Ors. vs. State of Rajasthan & Anr.** (S.B Civil Writ Petition No.3414/2009 and 3 other petitions).
 - ii. **Anil Kumar Gupta vs. State of Uttar Pradesh & Ors.** (1995 (4) SCT 403.
 - iii. **Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others.** (2007 (8) SCC 785.

- iv. **Jitender Kumar Singh and Anr. vs. State of U.P. and Ors.** (2010 (1) SCC (L&S) 772.
- v. **Naresh Kumar Sharma & Ors. vs. State of Rajasthan & Anr.** 2011(10) S.C.T. 292.
- vi. **State of Maharashtra & Ors. vs. Anita & Anr. etc.** (2016 (8) SCC 293.

- 16. Sh. Rohit Sharma appearing on behalf of respondent no.6 argued on similar lines.
- 17. We have given our thoughtful consideration to the entire matter and have perused pleadings available on board.
- 18. A conjunctive perusal of the pleadings would make it more than clear that the applicant had applied against 02 posts of female ASI and while declaring result, she was placed at serial no.16 in order of merit, including the male and female with 59 marks. While offering appointment, respondents have appointed a candidate namely Surya Parkash (Respondent No.6), who was placed at serial no.18 in order of merit, below the name of the applicant with 58 marks, and against 8th vacancy. His name is at placed at serial no.22 with 57 marks, who actually belongs to OBC category. Respondents have not considered the claim of the applicant for appointment despite being at serial no.16 in order of merit with 59 marks on the plea that her claim is to be considered against two notified vacancies for "general female" only and her claim cannot be considered against "general male" vacancy. The respondents

have failed to place on record any decision that women candidates cannot be appointed against a vacancy, meant for general male or any order under which they have prescribed quota for women candidates in Chandigarh Police. The impugned rejection order, does not talk of plea raised by the applicant in her representation, with regard to discrimination on the basis of sex which is totally barred under the constitutional provisions. They have only clarified that two female candidates have already been appointed, therefore, applicant cannot be offered appointment. Thus, the impugned order is non-speaking, without application of mind and cannot be sustained in the eyes of law. Once a plea has been raised by the applicant to consider her claim against general male vacancy, as per her own merit, then respondents are under obligation to reply to the grounds raised by her in the representation. Therefore, this order is non-speaking and cannot be sustained in the eyes of law.

19. Though this petition can be allowed and matter can be remanded back to respondents to decide the issue afresh, but considering the fact that the process for appointment started in the year 2007 and petition is pending before this Court for quite some time now, therefore, we have chosen to decide the same on merit. The view taken by the respondents in denying appointment to applicant against vacancy against 'general male' category cannot be accepted, because it violates clause 3 of Article 15 of Constitution of India, which envisages that there shall be no discrimination on the basis of caste, colour and sex. Hon'ble High Court in the case

of Neelam Rani (supra) has clearly held that Clause (3) of Article 15 of the Constitution empowers the State Government to make special provision for women and children to uplift their economic and social status. Therefore, fixing posts for women per se cannot be said to be violative of either Article 15 or 16 of the Constitution of India. Such reservation is a horizontal reservation and not vertical reservation as in the Rules. The horizontal reservation for women is in tune with the constitutional mandate and not the vertical reservation. Therefore, creation of vertical reservation for women is not sustainable. It has been further held in para 35 of the report that "the policy decision of the State Government that girl students studying in exclusively girls schools should be taught by women teachers cannot be said to be bad. In fact, the argument of learned counsel for the petitioners is that such reservation is permissible and justified in view of Article 15(3) of the Constitution. Therefore specified number of posts in exclusive girl's schools can be filled from amongst the women candidates. Such policy decision cannot be said to be unjustified. However, whether the extent of number of posts reserved for women is justified or not or it violates the other provisions of the Constitution has not been examined as. No such argument was raised before us."

20. Thus, it can safely be concluded that the issue for appointment of woman candidate against the post of male has been considered by Hon'ble jurisdictional High Court in the case of Neelam Rani

(supra), where in it has been held that there shall be no discrimination on the basis of sex and department cannot be allowed to reserve vacancies for male candidates and issue stands settled by now. The legal position has been summed up as under:-

- (1) Women cannot be excluded from competing against the posts specified to be filled up from amongst men.
- (2) Neither Article 15 nor 16 contemplates reservation of posts in favour of men. Posts are to be filled on basis of merit alone.
- (3) Posts other than posts meant for female candidates are required to be filled on basis of merit without any classification on the basis of sex.

21. Thus, considering the aforesaid proposition of law, the impugned orders and stand taken by the respondents cannot be sustained in the eyes of law and has to be invalidated.
22. Accordingly, the O.A. is allowed. The impugned order rejecting the representation of the applicant for appointment, and impugned order of appointment of respondent no.6, cannot sustain and are hereby quashed and set aside. Respondents are directed to consider the claim of the applicant for appointment forthwith. The parties are, however, left to bear their own costs.
23. M.A.Nos.640/2018 and 1030/2017 also stand disposed of.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 04.07.2018
Place: Chandigarh.

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