

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****CHANDIGARH****OA. No. 060/00597/2017****Pronounced on : 14.12.2017****Reserved on : 05.12.2017****CORAM: HON'BLE MR.JUSTICE M.S. SULLAR, MEMBER(J)
HON'BLE MRS.P. GOPINATH, MEMBER(A)**

1. Dr. Anurag Sankhian, aged 41 years S/o Late Sh. D.R. Sharma, working as Associate Professor (Geography), Govt. College of Education Sector 20/D, Chandigarh, resident of H. No. 3322, Sector 24/D, Chandigarh (Group A).
2. Dr. Sheojee Singh, aged 43 years S/o Sh. V.B. Ray, working as Assistant Professor (Physics), Govt. College of Education, Sector 20/D, Chandigarh, resident of H. No. 1358, Sector 28/B, Chandigarh (Group A).
3. Lilu Ram, aged 44 years S/o Sh. Balbir Singh, working as Assistant Professor (Physics), Govt. College of Education, Sector 20/D, Chandigarh, resident of H. No. 944-B, Sector 7, Chandigarh (Group A).

.....Applicants

BY ADVOCATE: Mr. Barjesh Mittal**VERSUS**

1. U.T. Chandigarh Administration through its Secretary, Education Department, U.T. Civil Secretariat, Sector 9, Chandigarh.
2. Director, Higher Education (Colleges), Directorate of Higher Education, Chandigarh Administration, Additional Deluxe Building, 1st Floor, Sector 9, Chandigarh.
3. Principal, Govt. College of Education, Sector 20, Chandigarh.

.....Respondents

BY ADVOCATE: Mr. Aseem Rai

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. UPSC issued Annexure A-4, advertisement inviting applications for various posts of Lecturers in Government College of Education, Chandigarh. Applicants participated in the selection process and were recommended for appointment to the post in the subjects of Geography and Physics. Applicants were issued Annexure A-6, offer of appointment dated 24.01.2003.

2. The appointment of some candidates belonging to OBC/SC category who also participated in the selection process and were recommended for appointment, was delayed due to seeking of some clarification regarding the status of their OBC/SC status. Following the decision by Apex Court in SLP/CA No. 4684 of 2001 titled Chandigarh Administration Vs. Surinder Kumar and Ors., SC/OBC candidates belonging to other States were issued appointment orders and they joined subsequent to the applicants in the OA. The respondents, on account of the order in OA No. 374/CH/2003 dated 15.04.2004, granted the date of recommendation of candidates for appointment to the post by the UPSC, as the deemed date of seniority. By giving the SC/OBC candidate the date of recommendation of UPSC as the deemed date of seniority, they were granted the benefits of senior scale/selection grade on a date earlier to that given to the applicants. The request of the applicant to be treated similarly i.e. to be treated similarly i.e. to be treated as to

be appointed on the date of recommendation by UPSC was rejected by the respondents vide Annexure A-1 order.

3. Annexure A-2, judgement of this Tribunal in OA No. 374/CH/2003 was disposed of with the following order:-

“5. The present OA is disposed of with a finding and direction that these applicants will be entitled to their seniority on the basis of the panel prepared by U.P.S.C. against which respondent No. 2 had denied them actual joining on grounds which have been found to be illegal as decided by this Bench, Hon'ble High Court and by the Hon'ble Supreme Court in cases which were similar to the cases of these two applicants. Applicants do not lay claim for pay and allowances with effect from the date of that panel. However, we hold that they are entitled to the benefit of seniority on the basis of the panel in which they were found selected.”

4. The relief sought by the applicants in this OA is to extend to them the deemed date of seniority as the date of UPSC recommendation, as given to SC/OBC selectees, instead of date of joining/appointment and to grant them the benefit of pay and allowances accordingly. Whereas the deemed date of seniority as prayed for by the applicants is agreed to on the ground of similarity of treatment in the identical recruitment, the prayer for disbursing the arrears of pay and allowances is not agreed to by the respondents as the applicants were neither in service nor had served in the post to which they were selected at the time the relief is claimed.

5. The respondents argue that relief sought by the applicants on the basis of that extended to SC/OBC which was based upon the peculiar facts and circumstances wherein due to seeking of clarification, there occurred a delay in offering appointment to the selected persons and same benefit cannot be extended to the

applicants who were offered timely appointment and hence are differently placed.

6. The background of the case was that a large number of OBC candidates belonging to other States were not allowed to join as a clarification was required whether OBCs of other State can be given employment in respondent States on their being recommended for appointment by the UPSC. Following the Tribunal judgement in OA No. 374/CH/2003, OBC candidates of other States were allowed to join in 2004 whereas the general category candidates such as the applicants joined in 2002-2003. The OBC candidates were given deemed date of seniority and other benefits on notional basis from the date of recommendation by the UPSC or the date from which their juniors in the merit list had joined. The respondents refute the granting of similar benefits to general candidates from the date of recommendation by the UPSC on the ground that none of the candidates who were granted the benefit of seniority from the date of recommendation by UPSC, are junior to the applicants in OA and would not in any way adversely affect the seniority of the applicants who are otherwise placed as junior to OBC selectees. The benefit has been extended, argues the respondents, on account of the delayed appointments which was in no way due to the fault of the OBC candidates. The Tribunal had also not laid down a proposition of law that this benefit of date of recommendation be extended in all cases.

7. Normally, the date of appointment of direct recruits to new post would be fixed from the date of joining. The date of joining should not normally affect the seniority of candidates based on merit drawn up by the recruiting agency, the UPSC in this case.

8. It is undisputed that both the appellant and the OBC persons were selected by UPSC in the same selection. It is also undisputed that OBC persons were ranked senior to appellants on the ground of being ranked as more meritorious. This is also not a case where a junior was promoted before a senior. This is a case where a junior is seeking parity of treatment vis-à-vis his senior whose date of appointment has been determined pursuant to an order of this Tribunal which has attained finality. Law is not a brooding omnipotence in the sky but a pragmatic instrument of ensuring that there is no differential in treatment of similarly placed persons. Whereas it would have been appropriate to grant the OBC candidates' seniority w.e.f. the date of appointment of their immediate juniors, but having been given the date of appointment w.e.f the date of recommendation by the UPSC, the applicants in this OA cannot be discriminated as no controversy had been raised regarding their appointment. In order to extend uniformity of treatment to persons recruited by the same recruiting agency in response to the same advertisement, it would be necessary to extend the same date of recommendation by the UPSC to the applicants in this OA also. However, the applicants will not be entitled to any arrears of pay as they have not rendered service in the post till the date of joining. The

notional date of appointment is to be recognized only for grant of notional increment and grant of subsequent financial upgradation and not for any other benefit of monetary arrears as applicant had not rendered service from this notional date of appointment.

9. OA is disposed of with the above directions. No order as to costs.

**(P. GOPINATH)
MEMBER(A)**

**(JUSTICE M.S. SULLAR)
MEMBER(J)**

**Dated:
ND***

